59TH CONGRESS, 1st Session. | SENATE. | REPT. 4253, Part 2.

IN RE REED SMOOT.

JUNE 11, 1906.—Ordered to be printed.

Mr. FORAKER, from the Committee on Privileges and Elections, submitted the following as the

VIEWS OF THE MINORITY.

[Senate Resolution 205, Fifty-seventh Congress, second session.]

The undersigned members of the Committee on Privileges and Elections, having had under consideration Senate Resolution No. 205, Fifty-seventh Congress, second session, adopted January 27, 1903, being unable to agree with the majority of the committee, submit the following minority report.

They attach hereto and make a part hereof a full statement of the case, showing all charges affecting or intending to affect the right and title of Reed Smoot to a seat in the Senate as a Senator from the State of Utah, together with an abstract of all the material, relevant, and competent testimony offered with respect thereto, and their conclusions deduced therefrom.

They ask that the same may be printed for purposes of reference as a part of this report, and respectfully refer to the same as a more complete statement of the following findings and propositions, and the testimony and arguments in support of the same, upon which they base their dissent from the conclusions and report of the majority of the committee.

I.

Reed Smoot possesses all the qualifications prescribed by the Constitution to make him eligible to a seat in the Senate, and the regularity of his election by the legislature of the State of Utah is not questioned in any manner.

II.

Aside from his connection with the Mormon Church, so far as his private character is concerned, it is, according to all the witnesses, irreproachable, for all who testify on the subject agree or concede

that he has led and is leading an upright life, entirely free from immoral practices of every kind. He is not a polygamist; has never had but one wife, and has been noted from early manhood for his opposition to plural marriages, and probably did as much as any other member of the Mormon Church to bring about the prohibition of further plural marriages.

III.

So far as mere belief and membership in the Mormon Church are concerned he is fully within his rights and privileges under the guaranty of religious freedom given by the Constitution of the United States, for there is no statutory provision, and could not be, prohibiting either such belief or such membership.

Moreover, having special reference to the Mormons residing in Utah and their peculiar belief, it was provided in the act of Congress, passed July 16, 1894, that the people of Utah should provide in their constitution "by ordinance irrevocable without the consent of the United States and the people of said States—

"1. That perfect toleration of religious sentiment shall be secured, and that no inhabitants of said State shall ever be molested in person or property on account of his or her mode of religious worship: *Provided*, that polygamous or plural marriages are forever prohibited."

In consequence there was embodied in the constitution of the State of Utah a compliance with this requirement, and thereupon the Territory was duly admitted as a State of the Union.

Accordingly, members of the Mormon Church, open and avowed believers in its doctrines and teachings, have been admitted without question to both Houses of Congress as Representatives of the State.

IV.

There remain but two grounds on which the right or title of Reed Smoot to his seat in the Senate is contested. They are:

1. That he is shown to have taken what is spoken of in the record as the "endowment oath," by which he obligated himself to make his allegiance to the church paramount to his allegiance to the United States; and

2. That by reason of his official relation to the church, as one of its apostles, he is responsible for polygamous cohabitation which yet continues among the Mormons, notwithstanding it is prohibited by law.

As to the "endowment oath," it is sufficient in this summary to say that the testimony is collated and analyzed in the annexed statement, and thereby shown to be limited in amount, vague and indefinite in character, and utterly unreliable, because of the disreputable and untrustworthy character of the witnesses.

There were but seven witnesses who made any pretense of testifying about any such obligation. One of these was shown by the testimony of two uncontradicted witnesses to be mentally unsound. Another, to have committed perjury in the testimony given before the committee on another point. The third was shown by the uncontradicted testimony of a number of witnesses to have a bad reputation for truth and veracity, and to be thoroughly unreliable. A fourth admitted that he had been for years intemperate, and was shown by indisputable testimony to have lost his position on that account, and thereupon and for

that reason to have withdrawn from the church and to have assumed such a hostile and revengeful attitude as to entirely discredit him as a reliable witness. The other three witnesses were so indefinite as to their statements that their testimony amounted at most to nothing more than an attempt to state an imperfect and confessedly uncertain recollection.

All that it is attempted to show as to the character of this oath is positively contradicted by Reed Smoot and a great number of witnesses, whose standing and character and whose reputation for truth and veracity are unquestioned, except only in so far as their credibility may be affected by the fact that they are or have been members of the Mormon Church.

Upon this state of evidence we are of opinion that no ground has been established on which to predicate a finding or belief that Mr. Smoot ever took any obligation involving hostility to the United States, or requiring him to regard his allegiance to the Mormon Church as paramount to his allegiance and duty to the United States.

V.

The only remaining question is whether or not by virtue of his official relation to the church as one of its apostles he has any responsibility for the continuation of polygamous cohabitation by members of that church.

The testimony on this point is also carefully collated and analyzed in the annexed statement.

It will be found by an examination of that testimony that he has never at any time, and particularly he has not since the manifesto of 1890, countenanced or encouraged plural marriages; but that on the contrary he has uniformly upheld the policy of the church, as announced by that proclamation, by actively advocating and exerting his influence to effect a complete discontinuance of such marriages, and that in the few instances established by the testimony where plural marriages and polygamous cohabitation, as a result of them, have occurred since 1890 they have been without any encouragement, countenance, or approval whatever on his part.

As to polygamous cohabitation in consequence of plural marriages entered into before the manifesto of 1890, there is no testimony to show that he has ever done more than silently acquiesce in this offense against law. In view of his important and influential position in the church, this acquiescence might be regarded as inexcusable if it were not for the peculiar circumstances attending the commission of this offense.

To understand these circumstances it is necessary to recall some historical facts, among which are some that indicate that the United States Government is not free from responsibility for these violations of the law. Instead of discountenancing and prohibiting polygamy when it was first proclaimed and practiced the Congress remained silent and did nothing in that behalf. While Congress was thus at least manifesting indifference, President Fillmore and the Senate of the United States in September, 1850, gave both recognition and encouragement by the appointment and confirmation of Brigham Young, the then head of the church, and an open and avowed advocate and representative of polygamy, to be governor of the Territory of

Utah. When his term of office expired under this appointment he was reappointed by President Pierce and again confirmed by the Senate.

There was no legislation or action of any kind by Congress on this subject until the act of July 1, 1862, which was in language, as well as legal effect, nothing more than a prohibition of bigamy in the Territories and other places over which the United States had jurisdiction.

After this act, for a period of twenty years, plural marriages and polygamous cohabitation continued in the Territory of Utah practically unrestrained and without any serious effort on the part of the United States to restrict the same.

Finally, in response to an aroused public sentiment, Congress passed the act of March 22, 1882, by which it prohibited both plural marriages and polygamous cohabitation, but legitimized the children of all such marriages born prior to the first day of January, 1883. Under this act prosecutions were inaugurated to enforce its provisions, but it was soon demonstrated that public sentiment was such that only partial and very unsatisfactory success could be secured.

Then followed what is known as the Edmunds-Tucker Act of March 3, 1887, by which, among other things, the rules of evidence were so changed as to make it less difficult to secure evidence in prosecutions for polygamy and polygamous cohabitation. Again, by the terms of this act, all the children born within twelve months after its passage were legitimized.

This statute was upheld by the Supreme Court of the United States, and efforts to prosecute such offenses were redoubled with such success that on the 26th day of September, 1890, the then president of the church, Wilford Woodruff, issued what is known as the manifesto of 1890, forbidding further plural marriages. So far as the testimony discloses there have been but few plural marriages since, perhaps not more than the bigamous marriages during the same period among the same number of non-Mormons.

The evidence shows that there were at this time about 2,400 polygamous families in the Territory of Utah. This number was reduced to 500 and some odd families in 1905. A few of these families may have removed out of the State of Utah, but so far as the testimony discloses the great reduction in number has been on account of the deaths of the heads of these families. It will be only a few years at most until all will have passed away. This feature of the situation has had a controlling influence upon public sentiment in the State of Utah with respect to the prosecutions for polygamous cohabitation since the manifesto of 1890.

Whether right or wrong, when plural marriages were stopped and the offense of polygamy was confined to the cohabitation of those who had contracted marriages before 1890, and particularly those who had contracted marriages before the statutes of 1887 and 1882, the disinclination to prosecute for these offenses became so strong, even among the non-Mormons, that such prosecutions were finally practically abandoned.

It was not alone the fact that if no further plural marriages were to oe contracted polygamy would necessarily in the course of time die out and pass away, but also the fact that Congress, having by the Statutes of 1882 and 1887 specifically legitimized the children of these polygamous marriages, it was inconsistent, if not unwise and impossi-

ble, in the opinion of even the non-Mormons, to prohibit the father of such children from living with, supporting, educating, and caring for them; but if the father was thus to live with, support, educate, and care for the children, it seemed harsh and unreasonable to exclude from this relationship the mothers of the children.

Such are some of the reasons assigned for the lack of a public sentiment to uphold successful prosecutions for polygamous cohabitation after 1890. It is unnecessary to recite others, for it is enough to say that whatever the real reason or explanation may be, the fact was that after 1890 it became practically impossible to enforce the law against these offenses, except in flagrant cases.

Such was the situation when the Territory applied for admission to the Union and Congress passed the enabling act of July 16, 1894, by which the people of Utah, in order to entitle them to admission into the Union, on terms prescribed by Congress, were required to incorporate in their constitution a proviso that "polygamous or plural marriages are forever prohibited;" not polygamous cohabitation, it will be observed, but only polygamous marriages. The testimony shows that there was a common understanding both in Congress and Utah that there were not only to be no more plural marriages, but that prosecutions for polygamous cohabitation had become so difficult that there was a practical suspension of them, and that time was the only certain solution of the perplexing problem.

This sentiment has not only ever since continued, but with the constant diminution of the number of polygamous families and the rapid approach of the time when all will have passed away, there has come a natural strengthening of the sentiment. The testimony in this respect is set forth at length in the annexed statement, but we make the following quotations in order that it may appear in this summary that there is this common disposition, among non-Mormons as well as Mormons.

Judge William McCarthy of the supreme court of Utah, a non-Mormon and an uncompromising opponent of polygamy, who has held many important offices of trust, among others that of Assistant United States Attorney for Utah, and who, as such, was charged with the duty of prosecuting these offenses, testified as follows:

> I prosecuted them (offenses of polygamous cohabitation) before the United States Commissioners up until 1893, when the United States attorney refused to allow my accounts for services for that kind of work, and then I quit and confined my investigations before the grand jury in those cases.

In explanation of his action he testified—we quote from the annexed statement:

> That he found the press was against the prosecutions; that the public prosecutor, whose attention he invited to the matter, refused to proceed. From this and other facts which came to his knowledge, Judge McCarthy reached the conclusion that the public sentiment was against interfering with men in their polygamous relations, who had married before the manifesto.

E. B. Critchlow, a non-Mormon attorney at law of Salt Lake City, one of the principal managers of this proceeding against Mr. Smoot, who gave the case his personal attention, attending most of the meetings of committee, testified before the committee, again quoting from annexed statement:

> That after the manifesto of 1890 there was no inclination on the part of the prosecuting officer to "push these matters as to present cohabitation," "thinking it was a

matter that would immediately die out;" that it was well known that Apostle John Henry Smith was living in unlawful cohabitation; that non-Mormons generally made no objection to it; that they were disposed "to let things go," and that that was the general feeling from the time of the manifesto in 1890 "down to very recent times—pretty nearly up to date, or practically up to date."

Mr. Critchlow further testified that the non-Mormons were disposed to overlook the continuous polygamous cohabitation of those who had taken plural wives before the manifesto, because they, the non-Mormons, felt satisfied that there would be no more plural marriages; that the thing would work itself out in the future, and that where the polygamists had their wives in separate houses and simply kept up the old relations without the offensive flaunting of them before the public, it had been practically passed over.

Orlando W. Powers, esq., a leading lawyer of Utah, who was associate justice of the supreme court of the Territory, and who showed by his testimony much hostility to the Mormon Church, testified that there was this general feeling after the manifesto not to interfere with those whose marriages were prior thereto. He then added, "There is a question for statesmen to solve. We have not known what was best to do. It has been discussed and people would say that such and such a man ought to be prosecuted.

"Then they would consider whether anything would be gained; whether we would not delay instead of hastening the time that we hope to live to see; whether the institution would not flourish by reason of what they would term persecution. And so, notwithstanding a protest has been sent down here to you, I will say to you, the people have acquiesced in the condition that exists."

He explained that by "the people" he meant the Gentiles.

The following quotation from a speech by Senator Dubois, reported in the Congressional Record of February 5, 1903, page 1729 et seq., is to the same general effect:

Mr. DUBOIS. * * * Various causes operated to cause the Mormons to abandon polygamy. There was a feeling among the younger members of the Mormom Church, and a very strong feeling, that polygamy should be done away with. So here was this pressure within the church against polygamy and the pressure by the Government from outside the church against polygamy. In 1891, I think it was, the president of the Mormon Church issued a manifesto declaring that thereafter there should be no polygamous marriages anywhere in the Mormon Church. The Mormons were then called together in one of their great conferences, where they meet by the thousands. This manifesto was issued to them by the first presidency, which is their authority; was submitted to them, and all the Mormon people ratified and agreed to this manfesto, doing away with polygamy thereafter.

The Senator from Maine (Mr. Hale) will recall that I came here as a Senator from Idaho shortly after that, and the Senator from Connecticut (Mr. Platt) will recall how bitter and almost intemperate I was in my language before his committee and on the floor of the other House in the denunciation of these practices of the Mormon Church. But after that manifesto was issued, in common with all of the Gentiles of that section who had made this fight, we said: "They have admitted the right of our contention and say now, like children who have been unruly, we will obey our parents and those who have a right to guide us; we will do those things no more." Therefore we could not maintain our position and continue punishing them unless it was afterwards demonstrated that they would not comply with their promise.

After a few years in Idaho, where the fight was the hottest and the thickest, we wiped all of those laws from our statute books which aimed directly at the Mormon people, and to-day the laws on the statute books of Idaho against polygamy and kindred crimes are less stringent than in almost any other State in the Union. I live among those people; and, so far as I know, in Idaho there has not been a polygamous marriage celebrated since that manifesto was issued, and I have yet to find a man in Idaho or anywhere else who will say that a polygamous marriage has been celebrated anywhere since the issuance of that manifesto.

Mr. HALE. Then, it must follow from that, as the years go by and as the older people disappear, polygamy as a practice will be practically removed.

Mr. DUBOIS. There is no question about it; and I will say to the Senator, owing to the active part which we took in that fierce contest in Idaho, I with others who had made that fight thought we were justified in making this promise to the Mormon people.

We had no authority of law, but we took it upon ourselves to assure them that those older men who were living in the polygamous relation, who had growing families which they had reared and were rearing before the manifesto was issued, and at a time when they thought they had a right under the Constitution to enter into polygamous relations—that those older men and women and their children should not be disturbed; that the polygamous man should be allowed to support his numerous wives and their children.

The polygamous relations, of course, should not continue, but we would not compel a man to turn his families adrift. We promised that the older ones, who had contracted those relations before the manifesto was issued, would not be persecuted by the Gentiles; that time would be given for them to pass away, but that the law would be strenuously enforced against any polygamous marriage which might be contracted in the future.

Much more testimony might be quoted of the same general character. It is sufficient, however, for the purpose of this summary to say that there is practically no testimony in conflict with that which has been quoted.

In other words, the conditions existing in Utah since Reed Smoot became an official of the Mormon Church in 1900 have been such that non-Mormons and Mormons alike have acquiesced in polygamous cohabitation on the part of those who married before the manifesto of 1890, as an evil that could best be gotten rid of by simply tolerating it until in the natural course of events it shall have passed out of existence.

With this disposition prevailing everywhere in the State of Utah among all classes—the Gentile or non-Mormon population as well as among the Mormons—the undersigned are of the opinion that there is no just ground for expelling Senator Smoot or for finding him disqualified to hold the seat he occupies because of the fact that he, in common with all the people of his State, has not made war upon, but has acquiesced in, a condition for which he had no original responsibility. In doing so he has only conformed to what non-Mormons, hostile to his church, as well as Mormons, have concluded is, under all the circumstances, not only the wisest course to pursue, but probably the only course that promises effective and satisfactory results.

J. B. FORAKER.
ALBERT J. BEVERIDGE.
WM. P. DILLINGHAM.
A. J. HOPKINS.
P. C. KNOX.

STATEMENT.

The minority respectfully submit the following statement as a part of their foregoing report.

January 27, 1903, the Senate adopted the following Senate Resolution No. 205:

Resolved, That the Committee on Privileges and Elections of the Senate, or any subcommittee thereof, be authorized and directed to investigate the right and title of Reed Smoot to a seat in the Senate as Senator from the State of Utah, and said committee, or any subcommittee thereof, is authorized to sit during the sessions of the Senate, to employ a stenographer, to send for persons and papers, and to administer oaths; and that the expense of the inquiry shall be paid from the contingent fund of the Senate upon vouchers to be approved by the chairman of the committee.

At the time of the adoption of this resolution there were pending in the Senate two formal protests against the admission of Reed Smoot to the Senate, both having been filed before he took his seat. One of these protests is signed by W. M. Paden and 17 others, and the other by John L. Leilich alone—Mr. Leilich being also one of the 17 who signed the principal protest.

Shortly before the adoption of the foregoing resolution at a preliminary hearing on the 16th day of January, 1903, of which notice was duly given, counsel appeared before the committee representing Mr. Paden and others who signed the principal protest, and Mr. Smoot also appeared in person and by counsel. At that time statements were made by counsel for the respective parties, stating in a general way what they expected to prove and what their claims were as to the legal aspects of the case. Later the taking of testimony commenced.

Numerous witnesses were produced and examined before the committee, both on behalf of the protestants and on behalf of Mr. Smoot. The taking of this evidence was continued from time to time until the 25th day of January, 1905, when the further taking of testimony was closed and counsel were heard in argument. The committee took the case under consideration with a view to making a report. Afterwards, at the present session the case was reopened for the further taking of testimony, after which the case was again argued by counsel.

In the protest signed by Mr. Leilich alone it was charged that Reed Smoot is a polygamist, and that, as an apostle of the Church of Jesus Christ of Latter Day Saints—commonly called the Mormon Church—he had taken an oath "of such a nature and character as that he is thereby disqualified from taking the oath of office required of a United States Senator." No one appeared, however, to sustain either of these charges. No evidence has been offered in support of either of them, but on the contrary both charges were refuted by a number of witnesses.

The investigation made by the committee has been based chiefly upon the charges made in the protest signed by Mr. Paden and others.

At the preliminary hearing already referred to counsel for the protestants presented, in a more formal way than had been done in the protest itself, the charges supposed to be embodied in that protest.

The charges thus presented are as follows:

First. The Mormon priesthood, according to the doctrine of that church and the belief and practice of its membership, is vested with, and assumes to exercise, supreme authority in all things temporal and spiritual, civil and political. The head of the church claims to receive divine revelations, and these Reed Smoot, by his covenants and obligations, is bound to accept and obey, whether they affect things spiritual or things temporal.

Second. The first presidency and twelve apostles, of whom Reed Smoot is one, are supreme in the exercise of this authority of the church and in the transmission of that authority to their successors. Each of them is called prophet, seer, and revelator.

Third. As shown by their teaching and by their own lives, this body of men has not abandoned belief in polygamy and polygamous cohabitation. On the contrary—

(*a*) As the ruling authorities of the church they promulgate in the most solemn manner the doctrine of polygamy without reservation.

(*b*) The president of the Mormon Church and a majority of the twelve apostles now practice polygamy and polygamous cohabitation, and some of them have taken polygamous wives since the manifesto of 1890. These things have been done with the knowledge and countenance of Reed Smoot. Plural-marriage ceremonies have been performed by apostles since the manifesto of 1890, and many bishops and other high officials of the church have taken plural wives since that time. All of the first presidency and twelve apostles encourage, countenance, conceal, and connive at polygamy and polygamous cohabitation, and honor and reward by high office and distinguished preferment those who most persistently and defiantly violate the law of the land.

Fourth. Though pledged by the compact and bound by the law of their Commonwealth, this supreme body, whose voice is law to its people and whose members were individually directly responsible for good faith to the American people, permitted, without protest or objection, their legislators to pass a law nullifying the statute against polygamous cohabitation.

In substance these charges so far as they seem to be a proper subject of inquiry here are:

1. That the Mormon Church exacts and receives from its members, including Reed Smoot, absolute obedience in all political matters.

2. That the Mormon Church is promulgating the doctrine of polygamy, and that the first presidency and all the twelve apostles, including Reed Smoot, "encourage, countenance, conceal, and connive at polygamy and polygamous cohabitation, and reward those who practice it."

No evidence has been submitted to the committee or has come to its knowledge in anywise affecting injuriously the general character of Reed Smoot. On the contrary, it has been admitted by the protestants, through their counsel, and a number of witnesses on both sides have testified, that his moral character is unimpeachable in every respect. In the protest of Mr. Paden and others it is explicitly stated that they do not charge him with any offense cognizable by law.

SOME HISTORICAL FACTS.

To a proper understanding of the voluminous evidence in the case, in so far as it tends to throw any light upon the question whether Reed Smoot is entitled to retain his seat in the Senate, it will be useful to set forth, in a preliminary way, certain indisputable historical facts.

The Mormon people, under the lead of Brigham Young, in their pilgrimage from Nauvoo, Ill., settled at the place now known as Salt Lake City in the summer of 1847. The place where they located was, at that time, Mexican territory. The Mormons, however, hoisted the Stars and Stripes on an eminence near the city, ever since called Ensign Peak.

On the 20th day of September, 1850, Brigham Young, the then head of the Mormon Church, was nominated for governor of the Territory of Utah by President Fillmore, and his appointment was confirmed by the Senate September 28, 1850. During his term of office under that appointment, and in the year 1852, Brigham Young, as the president of the Mormon Church, formally and publicly proclaimed polygamy as a doctrine of that church.

There is some dispute as to whether polygamy had not been proclaimed in 1844 by Joseph Smith, jr., Brigham Young's predecessor as president of the church; but it is not deemed necessary in this statement to consider the merits of that controversy. The admitted fact is that from the time of Brigham Young's announcement in 1852 polygamy was openly practiced in Utah by many of the Mormon people, including Brigham Young himself.

When his term of office as governor of the Territory expired in 1854 he was appointed for another term of four years by President Pierce, his nomination being again confirmed by the Senate; he served out his second full term of four years. During all of this time he continued to be president of the church and to openly live in polygamous relations with several wives.

ACT OF 1862.

There seems to have been no attempt by the Government of the United States to interfere with the practice of polygamy in Utah until July 1, 1862, on which date an act of Congress entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the legislative assembly of the Territory of Utah," became a law (12 Stat. L., 501).

The first section of that act is as follows:

> That every person having a husband or wife living, who shall marry any other person, whether married or single, in a Territory of the United States, or other place over which the United States have exclusive jurisdiction, shall, except in the cases specified in the proviso to this section, be adjudged guilty of bigamy, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, and by imprisonment for a term not exceeding five years: Provided, nevertheless, That this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years without being known to such person within that time to be living; nor to any person by reason of any former marriage which shall have been dissolved by the decree of a competent court; nor to any person by reason of any former marriage which shall have been annulled or pronounced void by the sentence or decree of a competent court on the ground of the nullity of the marriage contract.

It will be observed that while this section of the act of 1862 made it a penal offense to take a plural wife or husband it did not punish or in anywise interfere with the continued cohabitation of those who had previously entered into the polygamous relation.

THE EDMUNDS LAW.

Such cohabitation was not made an offense until March 22, 1882, when the so-called "Edmunds Act" became a law (22 Stat. at Large, 30). This act of 1882 amended the act of July 1, 1862 (which in the meantime had become section 5352 of the Revised Statutes). Section 3 of the amendatory act provided:

SEC. 3. That if any male person, in a Territory or other place over which the United States have exclusive jurisdiction, hereafter cohabits with more than one woman, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than three hundred dollars, or by imprisonment for not more than six months, or by both said punishments, in the discretion of the court.

In the seventh section of the same act it was provided as follows:

SEC. 7. That the issue of bigamous or polygamous marriages, known as Mormon marriages, in cases in which such marriages have been solomnized according to the ceremonies of the Mormon sect, in any Territory of the United States, and such issue shall have been born before the first day of January, anno Domini eighteen hundred and eighty-three, are hereby legitimated.

Soon after the Edmunds Act became a law, prosecutions were instituted in the Territorial courts against persons who were living in polygamy, those prosecutions being nearly all under the third section of the act, which made it an offense for a man to cohabit with more than one woman. From that time until October, 1890, the number of polygamous marriages in Utah decreased, but the practice was not entirely stopped.

THE EDMUNDS-TUCKER ACT.

By what is called the Edmunds-Tucker Act, approved March 3, 1887 (24 Stat. L., 635), the rules of evidence were changed so as to make a lawful husband or wife of a person accused of bigamy, polygamy, or unlawful cohabitation a competent witness.

By section 7 of that act the various acts of the legislative assembly of the Territory of Utah incorporating or continuing the corporation known as the Church of Jesus Christ of Latter-Day Saints were disapproved and annulled, and that corporation dissolved; and it was further made the duty of the Attorney-General of the United States to take proper proceedings in the supreme court of the Territory to wind up the affairs of the corporation. Section 11 of this act of 1887 further provided as follows:

SEC. 11. That the laws enacted by the legislative assembly of the Territory of Utah which provide for or recognize the capacity of illegitimate children to inherit or to be entitled to any distributive share in the estate of the father of any such illegitimate child are hereby disapproved and annulled; and no illegitimate child shall hereafter be entitled to inherit from his or her father or to receive any distributive share in the estate of his or her father: *Provided*, That this section shall not apply to any illegitimate child born within twelve months after the passage of this act, nor to any child made legitimate by the seventh section of the act entitled "An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," approved March twenty-second, eighteen hundred and eighty-two,

Although the act of 1862, above referred to, made it a criminal offense to marry a plural wife in the Territories of the United States, and although polygamy was openly and publicly practiced, there seems to have been little effort on the part of the Government to suppress it in Utah for many years after that time. Finally, however, one George Reynolds was indicted and charged with bigamy under that act, and his case was taken to the Supreme Court of the United States.

The principal question involved was whether, since polygamy was a duty under the religious doctrines of the Mormon Church, an act of Congress punishing the taking of a plural wife was an unconstitutional interference with religion. That case was decided at the October term, 1878 (Reynolds *v.* United States, 97 U. S., 145). The court held that while it was not competent for Congress to make a mere belief a punishable offense, yet it was entirely competent for it to make criminal an act which the person committing it might consider to be a duty under his religious belief.

It is worthy of note that the belief of the Mormons in the unconstitutionality of the act in question was so strong that Reynolds, a member of the church, voluntarily enabled proof of his offense to be obtained in order that the constitutionality of the act might be tested.

THE MANIFESTO OF 1890.

On the 26th of September, 1890, Wilford Woodruff, then president of the Mormon Church, issued what is called "The Manifesto," of which the following is a copy:

OFFICIAL DECLARATION.

To whom it may concern:

Press dispatches having been sent for political purposes from Salt Lake City, which have been widely published, to the effect that the Utah Commission, in their recent report to the Secretary of the Interior, allege that plural marriages are still being solemnized, and that forty or more such marriages have been contracted in Utah since last June or during the past year; also that in public discourses the leaders of the church have taught, encouraged, and urged the continuance of the practice of polygamy.

I, therefore, as president of the Church of Jesus Christ of Latter-Day Saints, do hereby, in the most solemn manner, declare that these charges are false. We are not teaching polygamy, or plural marriage, nor permitting any person to enter into its practice, and I deny that either 40 or any other number of plural marriages have, during that period, been solemnized in our temples or in any other place in the Territory.

One case has been reported in which the parties alleged that the marriage was performed in the Endowment House, in Salt Lake City, in the spring of 1889, but I have not been able to learn who performed the ceremony; whatever was done in this matter was without my knowledge. In consequence of this alleged occurrence the Endowment House was, by my instructions, taken down without delay.

Inasmuch as laws have been enacted by Congress forbidding plural marriages, which laws have been pronounced constitutional by the court of last resort, I hereby declare my intention to submit to those laws and to use my influence with the members of the church over which I preside to have them do likewise.

There is nothing in my teachings to the church or in those of my associates during the time specified which can be reasonably construed to inculcate or encourage polygamy, and when any elder of the church has used language which appeared to convey any such teachings he has been promptly reproved. And I now publicly

declare that my advice to the Latter-Day Saints is to refrain from contracting any marriage forbidden by the law of the land.

WILFORD WOODRUFF,
President of the Church of Jesus Christ of Latter-Day Saints.

At the semiannual general conference of the members of the Mormon Church, which was held on October 6, 1890, the foregoing declaration was unanimously accepted "as authoritative and binding." Two years later it was again approved by the general conference of the church. Since it was first approved by the general conference, in October, 1890, it has been and still remains a part of the fundamental law of the Mormon Church, which can be repealed or modified only by the action of a similar conference.

As to the effect of the manifesto on the power of the president of the Mormon church, or any subordinate official, to celebrate a plural marriage we quote a part of the testimony of James E. Talmage. Doctor Talmage prepared and issued, under the auspices of the church authorities, a work called "Articles of Faith," which authoritatively sets forth the doctrines of the church, having been submitted to, approved by, and published by the church itself. (Vol. III, pp. 47 and 48.)

Mr. WORTHINGTON. Doctor, you have used the expression here "holding the keys" in connection with that revelation involving polygamy, when it was given to Joseph Smith, jr., that he was the only man who held the keys to that power. He only at that time, or some person delegated by him, could make a plural marriage that would be valid according to the laws of the church. Am I right in that?

Mr. TALMAGE. Yes, sir.

Mr. WORTHINGTON. From that time on down to the time that President Woodruff issued this manifesto, which the church approved in conference assembled, the same principle obtained?

Mr. TALMAGE. Yes, sir.

Mr. WORTHINGTON. That a plural marriage could not be valid according to the law of the church, only when celebrated by the president, or by somebody authorized by him to celebrate it. Is that right?

Mr. TALMAGE. That is strictly true.

Mr. WORTHINGTON. Then when this revelation which is called the manifesto came and it was submitted to the people and accepted by them, that power was taken away from the president, was it not?

Mr. TALMAGE. Yes, sir.

Mr. WORTHINGTON. So that since the 6th of October, 1890, the president of the church had no power to solemnize a plural marriage according to the law of the church, even?

Mr. TALMAGE. That is true.

Mr. WORTHINGTON. And no power to authorize anybody else to celebrate one?

Mr. TALMAGE. That is true.

Mr. WORTHINGTON. So that if any person has undertaken to enter into plural marriage, if any woman has become the plural wife of a husband since the 6th day of October, 1890, she is no more a wife by the law of the church than she is by the law of the land?

Mr. TALMAGE. That is true.

Mr. WORTHINGTON. And it is not in the power of the president to revive the old system so that he can make a valid plural marriage or authorize one, unless he does it through the general conference of the church?

Mr. TALMAGE. Certainly. It is now a rule of the church that that power shall not be exercised. The power is there, but the exercise of it is entirely stopped, and a rule of the church thus made and sanctioned is equally binding with the law founded upon revelation, and the president therefore has in one sense, half voluntarily, inasmuch as he was the chief individual to bring it before the conference, but by the action of the conference, properly speaking, has surrendered that power as far as its exercise is concerned.

Mr. WORTHINGTON. It takes the action of the people to restore it, does it not?

Mr. TALMAGE. Most assuredly ——. (3—48, 49.)

THE ENABLING ACT.

The enabling act, under which Utah in January, 1896, was finally admitted into the Union, was passed by Congress on July 16, 1894 (28 Stat. L., 107). By section 3 of that act it was required that the State convention, which was authorized to be called to organize the State government, should provide:

> By ordinance irrevocable without the consent of the United States and the people of said States—
>
> First. That perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship: "*Provided,* That polygamous or plural marriages are forever prohibited."

It is very important to observe that while this act made it a condition to the admission of the State that polygamous or plural marriages should not be allowed, no provision of any kind was made against polygamous cohabitation. That offense was left to be governed by the constitution and laws of the State as the inhabitants of the State might determine.

The testimony shows that the distinction thus made by Congress in the enabling act between polygamous marriages and polygamous cohabitation was intentional. Polygamous marriages, as we have seen, were not forbidden by any act of Congress until 1862, ten years after polygamy had become prevalent in Utah. It was twenty years later still, 1882, before Congress prohibited polygamous cohabitation.

From the time polygamy was first promulgated by Brigham Young, as president of the Mormon Church, until about five years thereafter, he was continued in office by the Government as governor of the Territory. Both the Edmunds Act of 1882 and the Edmunds-Tucker Act of 1887 recognized polygamous marriages to the extent of making legitimate all the children born of such marriages prior to the passage of those acts, respectively, who might be born within a period in one case of nine months and nine days and in the other twelve months after the passage of the act.

POLYGAMOUS COHABITATION.

Under these laws families had been created, and children born of polygamous marriages had grown to manhood and womanhood. It is not surprising, under such circumstances, that there was a feeling on the part both of the Government officials in that Territory and of the people of the Territory that if further polygamous marriages should cease the continuance of polygamous relations theretofore created might be tolerated, if they were not openly or flauntingly carried on.

To prohibit such relations would be to deny the parents of legitimated children to dwell together with such children. Some twenty-five or thirty witnesses have been examined on this subject, most of them non-Mormons and several of them witnesses called on behalf of the protestants. There is a practical unanimity among them that at least from the time of the admission of the State into the Union, which occurred on January 4, 1896, there was practically a universal disinclination to prosecute those who had plural families born of relations established before the manifesto of 1890.

As a sample of the evidence on this subject we refer to the testimony of Judge William M. McCarty, one of the associate justices of the

supreme court of Utah. He was assistant United States attorney for the Territory of Utah from 1889 until 1902, when he was elected county attorney of Sevier County, in that Territory. He was reelected in 1894. In 1895 he was elected one of the district judges of the State of Utah.

He was reelected to that office in 1900, and in 1902 was elected to his present office. He is a non-Mormon, and has always been an uncompromising opponent of polygamy. He conducted some of the prosecutions for polygamous cohabitation between the date of the manifesto, in 1890, and the admission of the State into the Union in January, 1896. He testified:

> I prosecuted them before the United States commissioners up until 1893, when the United States attorney refused to allow my accounts for services for that kind of work, and then I quit and confined my investigations before the grand jury in those cases.

And Judge McCarty further testified that the superior to whom he referred as stopping the prosecution for polygamous cohabitation was John W. Judd, a Gentile.

In 1897 some prosecutions for polygamous cohabitations against men who were married before the manifesto came before Judge McCarty as district judge of the State. The accused in those cases admitted their guilt and were punished by a fine only, upon agreeing to cease cohabitation with their plural wives. Judge McCarty testified that it was after these prosecutions he obtained the first emphatic expression he had observed as to the state of public opinion in Utah at that time regarding such prosecutions.

He said that he found the press was against the prosecutions; that the public prosecutor, whose attention he invited to the matter, refused to proceed. From this and other facts which came to his knowledge Judge McCarty reached the conclusion that the public sentiment of the State was against interfering with men in their polygamous relations who had married before the manifesto. (Vol. 2, 882 to 886; 889, 916.)

E. B. Critchlow, a Gentile lawyer, of Salt Lake City, who prepared the principal protests in this case and who, during the early sittings of the committee, assisted Mr. Tayler, counsel for the protestants, in presenting their case, testified as a witness on behalf of the protestants that after the manifesto of 1890 there was no inclination on the part of the prosecuting officer to "push these matters as to present cohabitation," "thinking it was a matter that would immediately die out;" that it was well known that Apostle John Henry Smith was living in unlawful cohabitation; that non-Mormons generally made no objection to it; that they were disposed "to let things go," and that that was the general feeling from the time of the manifesto in 1890 "down to very recent times—pretty nearly up to date or practically up to date."

Mr. Critchlow further testified that the non-Mormons were disposed to overlook the continuous polygamous cohabitation of those who had taken plural wives before the manifesto, because they—the non-Mormons—felt satisfied that there would be no more plural marriages; that the thing would work itself out in the future, and that where the polygamists had their wives in separate houses and simply kept up the old relations without the offensive flaunting of them before the public it had been practically passed over. (Vol. 1, 624, 625.)

Another witness called on behalf of the protestants was Orlando W. Powers, a leading lawyer of Utah, a non-Mormon, who was associate justice of the supreme court of the Territory of Utah in 1885 and 1886, and whose testimony in general shows his strong feeling against the Mormon Church. He testified that, speaking for those who fought the church party in the days when it was a power, they had felt and still feel that if the church would stop new plural marriages, those who had contracted such marriages before the manifesto would not be interfered with. After stating that the people who lived in the East had no understanding of the situation in this regard in Utah, Judge Powers added:

> That condition exists. There is a question for statesmen to solve. We have not known what was best to do. It has been discussed, and people would say that such and such a man ought to be prosecuted. Then they would consider whether anything would be gained; whether we would not delay instead of hastening the time that we hope to live to see; whether the institution would not flourish by reason of what they would term persecutions. And so, notwithstanding a protest has been sent down here to you, I will say to you the people have acquiesced in the condition that exists.

Then the witness added that by "The people" he meant the Gentiles. (Vol. 1, 884–885.)

William J. McConnell, ex-governor of Idaho and ex-Senator of the United States from that State, when asked whether there was any public sentiment in Idaho in reference to prosecutions for simply unlawful cohabitation, as distinguished from new polygamous marriages, replied:

> It was understood and agreed when we adopted our State constitution and were admitted to statehood, that these old Mormons who had plural families would be allowed to support their wives and children without molestation. It was agreed by all parties, Democrats and Republicans alike, that they should be allowed to drift along. We could, under the law, have prosecuted these people and perhaps have sent them to jail. We could doubtless have broken up these families, but we felt it better that these men should be allowed to support these old women and these children than to further persecute them (2; 522).

This witness was sharply cross-examined by Mr. Tayler and by the chairman on this subject, with the result that he made his testimony more emphatic (2, 524, 526).

On his redirect examination he further stated that he agreed to the foregoing testimony of Mr. Critchlow and Mr. Powers (2, 531, 532).

F. H. Holzheimer, a leading lawyer of Idaho, who was practicing his profession in Utah until November, 1902, testified that the issuing of the manifesto of 1890 brought about a very peculiar state of affairs, and that the question of how to take care of the problem was one which confronted the people of Utah, and which the witness did not think they have really solved.

He added:

> The concensus of opinion at that time was that those who had contracted marriages prior to the manifesto should be left alone. It was not, however, believed that they should openly violate the law and unlawfully cohabit with their numerous wives. I will say this, that where that has occurred it has been mostly in isolated cases. There have been a number of cases where children have been born, but in no case that I know of has it been done openly. It is true it is against the law, but it has not been done in such an open, lewd manner as has been intimated nor has it been general. And because of the peculiar state of affairs it was the opinion that the whole thing would die out; that it was only a matter of a short time when the question would be entirely settled, because there would be no new marriages (2; 575–576).

Frank Martin, a lawyer of Idaho, testified that he believed those who were living in polygamous cohabitation in his State ought to be punished. But he added:

A majority of our people seem to think that the best way, as far as concerns those old fellows who contracted these relations before the manifesto, as long as they stop it and do not take any new wives, or as long as no new wives are taken, is to let it go, to let it gradually die out, to let the old ones die (2; 622).

James H. Brady, a Gentile of Idaho, who operates several irrigation canals in that State and owns a power plant at the American Falls, when asked what is the sentiment in Idaho regarding disturbing or leaving undisturbed the men who went into polygamy prior to the manifesto of 1890, answered:

To be absolutely frank in the matter, my judgment is that a majority of the men in Idaho would favor leaving those old men to live out their lives just as they have started in (2; 649).

J. W. N. Whitecotton, a lawyer who resides at Provo City, where Senator Smoot lives, and who is intimately acquainted in most of the Mormon counties in Utah, was asked what has been the sentiment among non-Mormons in Utah in regard to the men who had entered into polygamy prior to the manifesto of 1890, and answered:

Well, that is a pretty hard question to answer. The Gentiles in Utah have recognized that we have a very hard problem to deal with in that respect. It offers many embarrassing things. There has been a good deal said in this testimony—I have read it—about an understanding. I know nothing of any understanding in regard to that. But I do know this, that the people generally feel like they do not want to stir up this thing and set it to smelling any more. It has not a good odor.

And there is another thing that they have taken into account in the neighborhood where I am, at least. When we get out to punish this man who is living in polygamy, put him in prison, they take into account somewhat the consequences that will come to his family. Now, the women who went into polygamy in Utah went into it because, although I think under a delusion, they thought it was a religious duty, and they are bound by the obligation. They feel that way.

And under the rules of the church, as I understand them, a plural wife, if she is divorced from her husband, may not become the wife of another man, and those plural wives who have children are in a very precarious condition if they are to be entirely separated from the only protector they have. I think that the condition of these women and the children they have has probably entered as largely into the feeling of "let the matter slide along and not bother it" as any other factor.

On his further examination on this subject, the following occurred:

The CHAIRMAN. What is the sentiment in regard to those who contracted plural marriages before 1890 and are now living with their wives and having new children by them up to this time?

Mr. WHITECOTTON. The sentiment is that it is an awful condition.

The CHAIRMAN. That is a lawful condition?

Mr. WHITECOTTON. That is an awful condition.

The CHAIRMAN. Oh!

Mr. WHITECOTTON. Leave off the "l." And we wish we were out of it. We do not know how to get out of it.

The CHAIRMAN. What is the sentiment with respect to that class of people—approval or disapproval?

Mr. WHITECOTTON. They have the disapproval of the people generally, but that does not go to the extent of causing a man to shoulder the responsibility of setting the law in motion against that man.

The CHAIRMAN. So that that class of men are left without interference?

Mr. WHITECOTTON. They are left practically without interference. They have our regrets, but we do not know how to get at them.

Senator FORAKER. You have said that that is largely because of the regard the people have for the condition in which the plural wives and children would be left in case of a successful prosecution.

Mr. WHITECOTTON. Yes, sir. I think that (regard for plural wives and children) is the chief cause of withholding the hand of prosecution. Those women are human, and so are their children, and they are not much to blame, either, especially the children (2; 679–680).

Hiram E. Booth, a practicing lawyer of Salt Lake City and one of the leading managers in the State of the Republican party, upon being asked to explain why it is that, if the people of Utah, including a large part of the Mormon people, are so opposed to polygamy, those who are living in polygamous relations are not interfered with, said:

Well, my explanation of that is that the principal fight of the Gentiles has been to do away with polygamous marriages. While during many years there were numerous prosecutions for unlawful cohabitation, it was not for the purpose of punishment so much, those people who lived in unlawful cohabitation, as it was to bring about a cessation of polygamous marriages. That was the principle for which we strove, to stop people from marrying in polygamy. This was finally brought about in 1890 by the manifesto of the president of the church, which was affirmed, or sustained, as they call it, by the conference on October 6, 1890, and again in 1891. We did not accept that in good faith at that time.

That is, we were somewhat skeptical about it; but later we did. Now, there has been since that time a disinclination to prosecute men and women who live in unlawful cohabitation. One of my own reasons—the way I look at it—was this: My sympathy was with the plural wife and her children. By these prosecutions she suffered more really than the husband did. In nearly all of the cases I may say the plural wife is a pure-minded woman, a woman who believed that it was right according to the law of God for her to accept that relation, and that she can not be released from her obligations when they are once entered upon.

Mr. BOOTH. I should say, with Judge Powers and Mr. Critchlow, that the general sentiment among the Gentile people in Utah is a disinclination to prosecute those cases.

Mr. WORTHINGTON. If I understand you, when Senator Smoot was a candidate for Senator, and when he became an apostle, which was in April, 1900, things had settled down in Utah by the general acquiescence of the people that if there would be no new polygamous marriages the people who had entered into that relation before the manifesto should not be disturbed?

Mr. BOOTH. Should not be disturbed; no, sir.

Mr. WORTHINGTON. And that was the state of opinion there when he became an apostle?

Mr. BOOTH. That was the state of opinion when he became an apostle.

Mr. WORTHINGTON. And if he had gone against that state of opinion he would have been going against the public sentiment of the State, would he not?

Mr. BOOTH. Yes.

Mr. WORTHINGTON. Gentiles and Mormons?

Mr. BOOTH. Gentiles and Mormons. I would say in that respect that where polygamous relations were carried on in such a way as to outrage public sentiment, in those cases, of course, a prosecution would have been demanded (2; 714, 715, 723).

Arthur Pratt, who was deputy United States marshal in Utah from 1874 until 1882, and again from 1886 to 1890, and who probably arrested more Mormons charged with polygamy or polygamous cohabitation than any other man, said that he had heard Mr. Whitecotton and Mr. Booth testify on this subject, and that he agreed with them, for the reasons stated by them—not out of any pity or sympathy for the men, but out of sympathy and out of the suffering that would be entailed on the women and the children (2; 744).

E. D. R. Thompson, a non-Mormon, who has lived in Salt Lake City since 1889, never been a Mormon, and who has taken a leading part in Republican politics in that State, testified:

Well, the general idea has been that this condition of things would gradually die away by the lapse of time. It has been generally repugnant to most people who take any position as against the Mormons in this matter which would imply either prosecution or persecution. In other words, they did not care to be informers (2, 991).

Charles De Moisy (a non-Mormon), who is a commissioner of the State bureau of statistics of Utah, and has never been a Mormon, says, in regard to the sentiment among Gentiles in Utah as to the punishment of those who live in polygamous cohabitation where the marriages were celebrated before the manifesto, "I think there is a matter of indifference about it"—that he himself thinks—"the less said about those things the better" (2; 1003).

Glen Miller, a non-Mormon, who was United States marshal in the Territory of Utah for four and a half years, and had been a member of the State senate for two years after Utah had been admitted into the Union, when asked what is the sentiment of Gentiles in Utah in regard to prosecutions for polygamous cohabitation between persons who were married before the manifesto, answered:

> Well, there has been a sentiment against that, as there has been against any informing against any of the infractions of law generally. They have felt that it was only a question of time that the practice would die out through the death of those who practiced it and the removal of that generation (3; 160).

John W. Hughes, who has never been a Mormon, and is the editor of a weekly paper in Salt Lake City, when asked the same question, replied:

> Well, the sentiment has been right along that these old fellows that are in polygamy—to let them alone and they will soon die out. Very soon none of them will be left. The great point with the Gentiles is that there will be no new plural marriages (3; 163).

Mrs. Mary G. Coulter, a non-Mormon, whose husband is a physician in Ogden, testified:

> Those of us who have witnessed the old-time antagonisms and who are living and working for the new growth and progress do not believe in inquisitorial methods. We believe that the work of education, the establishment of industries, the developing of the mining regions, the building of railroads especially, and the influx of people, owing to the colonization schemes which are succeeding there, will in time eradicate all of the old and objectionable conditions (3; 170).

POLYGAMY IN OTHER COUNTRIES—HOW DEALT WITH.

A situation analogous to that existing in Utah after polygamy had been forbidden by the law of the church, as well as by the law of the State, arises in countries where polygamy is lawful, when missionaries have converted polygamists to the Christian faith. The question then frequently arises whether polygamists shall be admitted to the church, and if so whether they shall be required to put away all of their families except one. In the argument of the case, counsel for the respondent has referred to certain publications by various Christian churches, showing the proceedings that have taken place in some such cases and the results. The Presbyterian and Reformed Review, vol. 7, for 1896, contains an article on "The baptism of polygamists in non-Christian lands" from which the following extracts are taken:

> At the regular meeting of the synod of India, held in Ludhiana, November, 1894, among the most important questions which came before the synod was this: Whether in the case of a Mohammedan or Hindoo with more than one wife, applying for baptism, he should in all cases, as a condition of baptism, be required to put away all his wives but one. After a very thorough discussion, lasting between two or three sessions of the synod, it was resolved, by a vote of 36 to 10, to request the general assembly, "in view of the exceedingly difficult complications which often occur in the cases of polygamists who desire to be received into the church, to leave the ultimate decision of all such cases in India to the synod of India." The memorialists

add: "It is the almost unanimous opinion of the members of the synod that, under some circumstances, converts who have more than one wife, together with their entire families, should be baptized."

Not only is it thus the fact that more than four-fifths of the members of the synod of India believe that it may sometimes be our duty, under the conditions of society in India, to baptize a polygamist without requiring him first to put away all his wives but one, but when the missionary ladies present during the sessions of synod, desirous of ascertaining the state of opinion among themselves on this subject, took a vote thereupon, of these 36 ladies, many of them intimately familiar with the interior of zenana life for years, all feeling no less hatred of polygamous marriage than their sisters in America, all but three signified their agreement with the majority of synod, of which minority of three two had been only a few days in India and were therefore without any experience touching the practical questions involved. Nor is this large majority of our missionaries singular in their belief on this subject.

When some years ago the question was debated in the Panjab missionary conference, in which a large number of the missionaries and eminent Christian laymen of all denominations took part, ten out of twelve of the speakers expressed the same opinion as that held by more than four-fifths of the synod of India to-day. So the Rev. Dr. James J. Lucas, of Saharanpur, says that the brethren who maintained the lawfulness of not requiring a polygamist to put away any of his wives as a prerequisite to baptism "are not even in a minority in the missionary body in India."

A few years ago the Madura Mission voted in favor of baptizing such, provided they had contracted their marriages in ignorance and there was no equitable way of securing a separation. Their action was disapproved by the American board, but it none the less illustrates again what is the judgment of a large part of those who, living in India, are in most intimate relation to the living facts, and who are thus far better qualified to form a right decision than can be the wisest men at home.

* * * * * * *

Again, as bearing on the polygamist's duty, it should be noted that in the great majority of cases among the Hindus the second marriage is contracted because of the first wife having no children. So that when the general assembly requires the polygamist convert to put away all wives but the first, it requires him not only to signalize his conversion by violating a contract held valid alike by his Christian rulers and a large part of his Christian brethren, but to do this in such a way as shall inflict the greatest amount possible of cruel injustice and suffering, by turning out of his house that wife who is the mother of his children (who will naturally in most cases have to go with her) and denying to her conjugal rights of protection and cohabitation which he had pledged her.

The wrong involved is aggravated under the conditions of life in India, in that it will commonly be practically impossible for the wife turned off, whichever she be, to escape the suspicion of being an unchaste woman, and she will inevitably be placed in a position where, with good name beclouded and no lawful protector, she will be under the strongest temptation to live an immoral life. No doubt polygamy is wrong; but then, is not breach of faith and such injustice and cruelty to an innocent woman and her children also wrong? If there is a law against polygamy, is there not a law also against these things even more explicit and indubitable? In the case supposed both can not be kept. Which shall the man be instructed to break?

The general assembly of 1875 appears to have imagined that the injustice was done away by enjoining a man to "make suitable provision for her support that is put away, and for her children, if she have any." But this utterly fails to meet the case. For the breach of faith required remains, since the marriage contract, both according to Scripture and the law of all Christian lands, as well as of India, binds the husband not only to support, but equally to protection and cohabitation. But by the deliverence of 1875 all missionaries in non-Christian lands are directed by the general assembly to instruct the convert that, in order to baptism, he must keep the compact as regards the first particular, but break it as regards the others.

Moreover, the moral end sought will, even so, not be gained. The wife put away may live in a separate house and at a distance—but then polygamists sometimes keep different wives in different homes—and it will not be easy to persuade a Hindoo or Mohammedan community, especially if the man still continue to give her money as required by the assembly's law, that cohabitation really ceases.

In India and Christian Opportunity, a book published in 1904, the author of which is Harlan P. Beach, M. A., F. R. G. S., in dealing

with the general subject of "Problems connected with new converts," the author, at page 222, says:

1. *Polygamy.*—One difficulty in the way of receiving a professed convert, though affecting only a small percentage of candidates, is a most perplexing one; it is that of applicants who have more than one wife. As Hindoo or Mohammedan they have entered in good faith into marriage contracts with these wives, and if a man puts away all but one, what provision shall be made for the rejected, and on what principle shall he decide as to the one to be retained?

While it is a question easily answered in missionary society councils at home, it is a more serious problem at the front. Some good missionaries hold that where the husband is living the Christian life in all sincerity it is better to receive into the church such a candidate—though not eligible to any church office—than to require him to give up all but one wife and thus brand with illegitimacy his children by them, as well as occasion the wives so put away endless reproach and embarrassments.

In India's Problem, Krishna or Christ, which was published in 1903, the author of which is John P. Jones, D. D., of southern India, A. B. C. F. M., the author, in dealing with this question, says, on pages 289 and 290:

In the consideration of the problem many things must be kept in mind. None more important than the claims to a cordial welcome from the church of any man who, in true faith and Christian earnestness, seek admittance. If it be demanded of the man that he put away all but one of those wives taken in heathenism, then we ask whether it is Christian, or even just, to cast away one to whom he was solemnly and religiously pledged according to the laws of the land and with whom he has been linked in love and harmony for years and from whom he has gotten children? And if he is to put away one or more of his wives, which one shall it be? Shall it be the first wife?

Certainly that would not be Christian. Or shall it be the second wife who is the mother of his children and whom he probably married at the request of the first who was childless in order that he might raise seed unto himself? It is not easy on Christian grounds to decide such a problem as this, nor is it very Christian to put a ban upon any woman who, in accordance with their religion and their country's laws, has formed this sacred alliance with a man and has lived with him for years. Nor can it be right to brand with illegitimacy the children born of such a wedlock.

I would not allow such persons, received into the Christian church, to become officers of the church. But I can not see why there may not be an humble place in the church of God for such and their families.

Whatever may be our personal views as to the propriety of the conduct of the people of Utah, in thus practically overlooking the continuance of polygamous relations where those relations arose out of marriages celebrated before the manifesto of 1890, there can be no doubt that when Reed Smoot, in April, 1900, became an apostle of the Mormon Church, the great majority of the people of the State, non-Mormons as well as Mormons, had practically agreed that it would be unwise to prosecute those who are living in such relations, or to in anywise interfere with them, unless those relations were flagrantly obtruded upon public notice.

REED SMOOT NOT RESPONSIBLE FOR POLYGAMY.

The charge of the protestants in this case, in substance, is that Reed Smoot connived at and encouraged, thereby becoming responsible for, the polygamous relations of certain of the officials of the church and of other polygamists. There is no evidence to support this charge except the fact that he acquiesced without protest in what the people of Utah generally accepted as unavoidable. In his answer and in his testimony, on his oath, he has positively denied that he has ever advised any person to violate the law either against polygamy or against polygamous cohabitation.

No witness has been produced who has testified that he ever heard the respondent give any such advice, or in any wise defend such acts. The most anybody has attempted to charge is that he has, like others, both Mormons and non-Mormons, ignored the offense of polygamous cohabitation both in the church and under the laws of the State when such polygamous cohabitation was in consequence of plural marriages solemnized before 1890.

In view of the general situation and the fact that non-Mormons, even the most active opponents of the church, had by common consent adopted the policy of acquiescence as the wisest plan to pursue as to polygamous cohabitation, relying on time and the course of nature to cure the trouble, we do not think such passive acquiescence on the part of Mr. Smoot can be held to amount to such an indorsement and encouragement of polygamous cohabitation as to make him responsible for it.

POLYGAMOUS MARRIAGES SINCE 1890.

It is further charged that notwithstanding the acts of Congress forbidding them, and in defiance of the manifesto of 1890, polygamous marriages have been celebrated by the authorities of the church since 1890.

We have already shown that since the manifesto forbidding the celebration of plural marriages became the law of the church by being ratified at a semi-annual conference of the church, neither the president of the church nor any other officer thereof has the power to celebrate a plural marriage which would be any more binding under the law of the church than it would be under the law of the land.

Evidence relating to such plural marriages since 1890 could, of course, be competent in this case only as it might, with other evidence, tend to show that the respondent has advised such marriages, or in some way connived at or approved them.

On this point there is some evidence tending to show, but not in fact showing, that in the period of over fifteen years which has elapsed since the manifesto of 1890 was promulgated there may have been some fifteen or twenty cases in which a member of the Mormon Church has cohabited with a woman as his plural wife with whom he sustained no such relation prior to 1890.

In only one instance has the evidence shown the actual performance of the marriage ceremony and that occurred in Mexico. In that case it appears that a woman named Kennedy, in the year 1896, with her mother, on several occasions appealed to Apostle Teasdale, in Mexico, to marry her to a man who was already married and had a wife living, and that the apostle, whenever appealed to, refused to perform the marriage ceremony on the ground that it was forbidden by the church.

The parties then traveled in a wagon about 75 miles to an out-of-the-way place where, according to the testimony of the woman, Brigham Young, jr., another apostle, did marry her to the man in question. At the time this testimony was given Brigham Young, jr., was dead. No person testified to the ceremony except the woman who was married, and she stated that she did not tell Brigham Young that the man whom she was marrying had a wife living, and that so far as she knew he was not informed of that fact by any person.

There was no evidence offered tending to prove that the respondent had any knowledge of this alleged plural marriage until it came out in the testimony before the committee.

Among the cases of alleged plural marriage since 1890, referred to in the evidence, are those of two of the apostles, John W. Tayler and Mathias F. Cowley.

As to Apostle Tayler, L. E. Abbott gave testimony tending to show that it became public talk in or about 1902 that Tayler had then recently taken two plural wives. As to Apostle Cowley, the testimony is exceedingly indefinite as to whether he took a plural wife at all since 1890, and if so, when.

The respondent was examined as a witness in his own behalf, after the testimony with reference to the alleged recent plural marriages of these two apostles had been introduced, and on this subject testified that he knew nothing about the alleged marriages until the testimony relating to them was introduced here before the committee. He further said that he would ask that an investigation be made by the church authorities, and if it turned out that the charges were true he would not again vote to sustain them as apostles.

The taking of testimony in this case was closed and the case submitted to the committee after argument by counsel in February, 1905. But at the beginning of the present session, it being made known to the committee that it was desired to introduce further evidence on behalf of the protestants, the case was reopened and further testimony was heard on behalf of both the protestants and the respondent. The testimony was closed the second time on March 27, 1906; but, consulting the convenience of counsel for the protestants, the hearing by the committee of the final arguments of counsel in this case was postponed until April 12, 1906.

On account of these delays, for which neither the respondent nor his counsel are in anywise responsible, the case was not finally submitted to the committee for determination until after the final conference of the Mormon Church, which was held at Salt Lake City on April 6, 1906. At that conference it was made known that Taylor and Cowley had resigned from their positions as apostles in the preceding October, and that the resignations had been accepted. The conference approved this action, and also filled the vacancies thus created by new appointments.

We deem it unnecessary to go at length into the evidence relating to the other alleged plural marriages since 1890, for the reason that there is no evidence whatever in the record which even tends to show, as to any such plural marriage, actual or alleged, that the respondent had any knowledge that it was intended such marriage should be celebrated, or that he ever countenanced it in any way or that, since it took place, he has at any time or in any way expressed approval of it.

In 1890, when the manifesto was promulgated, there were in the Mormon Church, according to church statistics, in the United States some 2,451 polygamous families. In May, 1902, this number had been reduced to 897. How many are left and how many of them are in Utah it is impossible to say; but probably about 500 would be a fair estimate. Many of the heads of these families are of advanced age. The population of Utah at the present time is about 500,000.

These figures strongly tend to show that, as a matter of fact, new polygamous marriages in Utah, in any considerable numbers, can not have taken place since 1890. In further evidence of this fact, and as showing the state of public sentiment as to polygamous cohabitation, we insert here an extract from the Congressional Record of February

5, 1903, page 1729 et seq., showing a statement made by Senator Dubois, who is well known to have familiar knowledge of this subject:

[Congressional Record, Feb. 5, 1903, p. 1729, et seq.]

Mr. DUBOIS. * * * Various causes operated to cause the Mormons to abandon polygamy. There was a feeling among the younger members of the Mormon Church, and a very strong feeling, that polygamy should be done away with. So here was this pressure within the church against polygamy and the pressure by the Government from outside the church against polygamy.

In 1891, I think it was, the president of the Mormon Church issued a manifesto declaring that thereafter there should be no polygamous marriages anywhere in the Mormon Church. The Mormons were then called together in one of their great conferences, where they meet by the thousands. This manifesto was issued to them by the first presidency, which is their authority, was submitted to them, and all the Mormon people ratified and agreed to this manifesto, doing away with polygamy thereafter.

"The Senator from Maine (Mr. Hale) will recall that I came here as a Senator from Idaho shortly after that, and the Senator from Connecticut (Mr. Platt) will recall how bitter and almost intemperate I was in my language before his committee and on the floor of the other House in the denunciation of these practices of the Mormon Church. But after that manifesto was issued, in common with all of the Gentiles of that section who had made this fight, we said:

"They have admitted the right of our contention and say now, like children who have been unruly, we will obey our parents and those who have a right to guide us; we will do those things no more." Therefore we could not maintain our position and continue punishing them unless it was afterwards demonstrated that they would not comply with their promise.

After a few years in Idaho, where the fight was the hottest and the thickest, we wiped all of those laws from our statute books which aimed directly at the Mormon people; and to-day the laws on the statute books of Idaho against polygamy and kindred crimes are less stringent than in almost any other State in the Union. I live among those people; and, so far as I know, in Idaho there has not been a polygamous marriage celebrated since that manifesto was issued, and I have yet to find a man in Idaho or anywhere else who will say that a polygamous marriage has been celebrated anywhere since the issuance of that manifesto.

Mr. HALE. Then, it must follow from that, as the years go by and as the older people disappear, polygamy as a practice will be practically removed.

Mr. DUBOIS. There is no question about it; and I will say to the Senator, owing to the active part which we took in that fierce contest in Idaho, I with others who had made that fight thought we were justified in making this promise to the Mormon people. We had no authority of law, but we took it upon ourselves to assure them that those older men who were living in the polygamous relation, who had growing families which they had reared and were rearing before the manifesto was issued, and at a time when they thought they had a right under the Constitution to enter into polygamous relation—that those older men and women and their children should not be disturbed; that the polygamous man should be allowed to support his numerous wives and their children.

The polygamous relations, of course, should not continue, but we would not compel a man to turn his families adrift. We promised that the older ones who had contracted those relations before the manifesto was issued would not be persecuted by the Gentile; that time would be given for them to pass away, but that the law would be strenuously enforced against any polygamous marriage which might be contracted in the future.

As further evidence of the same character we call attention to the testimony of Judge Charles W. Morse, a member of the Methodist Church and one of the judges of the third judicial district of Utah. In May, 1903, by his direction, a special grand jury was convened at Salt Lake City for the purpose of investigating charges that new polygamous marriages were being celebrated. This grand jury was composed of Mormons and non-Mormons. Its report will be found on pages 867 to 870 of volume 3 of the testimony. In their report they say:

We have investigated thoroughly all such cases brought to our attention by the district attorney and by citizens who have appeared before us, which were reported

to have occurred within the jurisdiction of this court, and have not been able to secure evidence that a single case of polygamy has occurred in this district since Utah became a State. The rumors of the commission of this crime seem to have grown out of innocent circumstances, which in ordinary communities would have created no suspicion or scandal, but which here, probably owing to a feature of our territorial history, have been seized upon and the crime assumed without evidence, much to the chagrin and injury of innocent citizens, and greatly to the detriment of our State and its reputation throughout the nation. Those who prize the fair name of our State and the rights of our neighbors should hereafter be more careful to secure facts and evidence before charging this crime.

Judge McCarty, whose testimony has already been referred to, testified as follows:

Mr. WORTHINGTON. I am coming down to that question next. What is your observation there as to whether, as a matter of fact, the number of people living in polygamy has decreased since 1890 in Utah?

Mr. MCCARTY. Oh, the change has been phenomenal.

Mr. WORTHINGTON. Phenomenal?

Mr. MCCARTY. Yes; phenomenal. There are only a very few. In the little town in which I resided there for over twenty years there were a large number of polygamists. Oh, there must have been in the neighborhood of twenty of them, and I can not call to mind now but three of those old men who are living. They have all died or moved away. Two of them procured divorces, either a church divorce for a plural wife or a divorce in the courts for the legal wife.

Mr. WORTHINGTON. What town is that to which you refer?

Mr. MCCARTY. That is Monroe.

Mr. WORTHINGTON. So that there polygamy is practically extinct?

Mr. MCCARTY. Yes; and what can be said of Monroe can be said of most other towns in the State.

Mr. WORTHINGTON. Most other towns in the State?

Mr. MCCARTY. Yes. (Vol. 3, 888, 889.)

THE MORMON CHURCH AND POLITICS.

As to the charge that the Mormon Church interferes in and controls political affairs in Utah, we find the facts established by the evidence to be substantially as follows: From the time the Mormons reached Utah, in the summer of 1847, until 1891 there were no political parties in that Territory in the sense in which that expression would be used in other parts of the United States. There grew up in the Territory of Utah during that time two parties, one known as the People's Party, which was comprised exclusively of members of the Mormon Church and was controlled by the leaders of that church, and the Liberal Party, which was composed of non-Mormons.

Owing to controversies concerning polygamy and other matters not in issue elsewhere in the United States, these two parties were not only composed, on the one hand, of members of a religious sect and on the other hand of those opposing that sect, but the controversy between the two parties was extremely bitter. It seems not to be controverted that until the year 1891 the People's Party was not only dominated by the church, but practically was the church. But after the manifesto of 1890, hereinbefore referred to, which forbade further polygamous marriages, many members both of the Liberal Party and of the People's Party conceived it to be to the interests of the Territory that the people should divide on party lines as they were divided in other parts of the country, and that the Liberal Party and the People's Party should be disbanded.

In the course of a few months this purpose was carried into effect. The great majority of the voters of the Territory of Utah, Mormons and non-Mormons, became either Republicans or Democrats, and political controversies in the Territory till 1896 and after that time in the

State have been waged, as a rule, on the lines of the national political parties.

While it is no doubt true that the habit which the church and the members of the church had followed for so many years prior to the breaking up of the old parties of voters receiving counsel from officials of the church in regard to the selection of candidates for office was not at once completely broken off, yet the evidence further establishes that the improvement in this regard has been very rapid and that, of late years, the Mormon voters of the State adhere more closely to party lines than the non-Mormons do. We think the evidence establishes the fact that since Reed Smoot became an apostle of the Mormon Church on the 6th day of April, 1900, the Mormon Church has not controlled or attempted to control elections in Utah.

It is claimed, however, that the church, by an instrument called the "Political Rule," has required of its members holding office in the church that before they shall become candidates for any political position they shall receive the consent of the church authorities; and that by this device the church has controlled the election of Senators of the United States.

This political rule will be found on pages 168 to 171, Volume I, of the printed report of the testimony before the committee. The meaning and effect of this instrument were very fully considered in the case of Moses Thatcher, who in 1896 was a candidate before the legislature of the State of Utah for election as Senator of the United States.

Thatcher, at the time, was one of the twelve apostles of the church, and he did not seek or obtain the consent of the church authorities to this candidacy. For this offense he was tried before a high church tribunal. The decision of this tribunal, the acceptance thereof by Moses Thatcher, and the acquiescense by the church authorities in the terms upon which he accepted the conclusion of the tribunal, will be found upon pages 563 to 573 of the same volume. Mr. Thatcher was a witness before the committee, and his testimony on this subject will be found on pages 1038 to 1040 of that volume.

The upshot of it all is that the political rule, as construed by these proceedings, left Thatcher, to use his own words, absolutely free as an American citizen, to exercise his rights as such, and left all the officers of the church absolutely free. In his acceptance of the decision of the council Thatcher expressly stipulated that in accepting it he violated none of the engagements theretofore entered into by him, "under the requirements of party pledges respecting the political independence of the citizen who remains untrameled, as contemplated in the guaranties of the State constitution."

Indeed, in the political rule itself, it is expressly stated that if any officer of the church wishes to become a candidate for a political office, or to enter into any other engagement which will interfere with the duties of his church office, he may do so without soliciting or obtaining the consent of the church or its authorities by resigning his ecclesiastical position. The whole purport and effect of the rule seems to be that high church officials, filling positions which require them to give their time to their ecclesiastical duties, shall not enter into any engagements of any kind, political or otherwise, which require them to abandon or neglect such ecclesiastical duties, without first obtaining the consent of the authorities of the church.

Thus construed the rule seems to be a reasonable one; but whether reasonable or unreasonable it does not seem to us that it is within the province of the General Government to interfere with it or punish in any way the members of the church because of its promulgation.

The evidence in the case clearly establishes that Mr. Smoot, for some time before he became a candidate for the Senate and even before he became an apostle, was one of the leaders of the Republican party in the State of Utah; that he had been frequently spoken of either as a candidate for the governorship of the State or the Senate of the United States; that when he became a candidate for the Senate he was, in the words of some of the witnesses, the logical candidate for that office, and that he was elected by the votes of the Republicans in the legislature, Mormons and non-Mormons, and was opposed by the Democrats in that body, Mormons and non-Mormons. He says, in his testimony, that before formally becoming a candidate, he went to the first president of the church and obtained the consent of the Church to his becoming a candidate.

As already intimated, if that consent had been refused, it meant no more than if he became a Senator he must give up his apostleship.

There has been no evidence offered tending to show that any member of the Mormon Church has ever asked consent to become a candidate for any office and been refused.

THE ENDOWMENT OATH.

The only other charge made against the respondent which, in our opinion, merits attention was made in the protest signed by John L. Leilich, as follows:

> That the oath of office required of and taken by the said Reed Smoot as an apostle of the said church is of such a nature and character that he is thereby disqualified from taking the oath of office required of a United States Senator. (1; 28.)

This same charge was in effect made in the protest signed by W. M. Paden and 17 others in the following clause as a deduction from previous statements, rather than a specific charge in itself:

> We submit that however formal and regular may be Apostle Smoot's credentials or his qualifications by way of citizenship, whatever his protestations of patriotism and loyalty, it is clear that the obligations of any official oath which he may subscribe are and of necessity must be as threads of tow compared with the covenants which bind his intellect, his will, and his affections, and which hold him forever in accord with and subject to the will of a defiant and lawbreaking apostolate. (1; 25.)

In the sworn answer made by the respondent to these charges on this subject he says:

> As to the charge that the respondent is bound by some oath or obligation controlling his duty and his oath as a Senator, the respondent says that he has never taken any such oath or in any way assumed any such obligations. He holds himself bound to obey and uphold the Constitution and laws of the United States, including the condition in reference to polygamy upon which the State of Utah was admitted into the Union; (1; 31.)

During the examination of the first witness called by the protestants, Joseph F. Smith, a discussion arose in which Senator Hoar stated that he understood that the committee had reached a conclusion that there were two issues in the case—one whether Reed Smoot had practiced polygamy, which the Senator understood had been abandoned, and that the only other one was whether or not as an official of the Mormon

Church the respondent took an oath or obligation that was superior in his estimation and in its requirements upon him to the oath or obligation which he must take to qualify him as a Senator.

Thereupon Senator Dubois stated that both these contentions were set aside entirely and that it was not contended that they would be attempted to be proved by the attorneys representing the protestants. (1; 114.) In the course of further discussion a member of the committee having stated that he never knew until Mr. Tayler had stated it that he had abandoned the idea of proving that the respondent had taken an obligation that interfered with the obligations of his oath, Mr. Tayler replied:

> I can not abandon that which I never occupied or possessed.

Senator Dubois added, "He never alleged it." (1; 115.)

On a subsequent day, Senator Beveridge, in order, as he stated, to correct what he thought was a mistake in the popular mind as to what were the charges against the respondent which the committee was considering, said that it had been charged that the respondent was a polygamist, which charge had been withdrawn, and that he had been charged with taking an oath inconsistent with his duty as a Senator, which Senator Beveridge understood Mr. Tayler to say was not a charge that had been withdrawn, but was such a charge as had never been made, and that, therefore, the issue upon which the committee would proceed from that time on, so far as the protestants were concerned, was whether the respondent was a member of a conspiracy.

Thereupon Senator Dubois again stated that no charge had been made against Mr. Smoot of taking an oath inconsistent with his oath as Senator except the Leilich charge, which had been abandoned and repudiated, and that the attorneys for the respondent "have been trying to force the protestants to issues which they themselves have never raised." (Vol. 1, p. 126.)

This was the state of the record when the testimony of Joseph F. Smith and several other witnesses had been taken, and the examination of Francis M. Lyman, one of the apostles, was progressing.

He was asked by the chairman to state what the "ceremony is in going through the endowment house." This being objected to by the counsel for respondent, the chairman said:

> One of the charges is that Mr. Smoot has taken an oath or obligation incompatible with his obligation as a Senator. The object of this question is to ascertain from this witness, who went through the endowment house—of course, I know nothing about it—whether any such obligation is taken.

Counsel for the respondent having thereupon stated that they understood that that charge had been expressly disclaimed by counsel for the protestants, the chairman replied:

> Counsel stated that they did not propose, as far as they were concerned, to offer any proof upon that question, but the chair did not understand that therefore the committee was precluded from showing it. (1; 436.)

A little later in the same session, Mr. Tayler, counsel for the protestants, again stated:

> It is in respect of those two things around which all of this case gathers—polygamy and the direction of the people by the apostolate—and if those two were eliminated this hearing would not be going on here. (1; 463.)

After the chairman of the committee had ruled as above stated that the witness Lyman was required to answer the question, his examination on this subject proceeded as follows:

The CHAIRMAN. Will you please state what the ceremony is in going through the endowment house?

Mr. LYMAN. I could not do so.

Mr. WORTHINGTON. I object to that, Mr. Chairman, on the ground that it is inquiring into a matter prior to 1890, and I understood, or we were informed, that the committee had decided that would not be done.

The CHAIRMAN. One of the charges is that Mr. Smoot has taken an oath or obligation incompatible with his obligation as a Senator. The object of this question is to ascertain from this witness, who went through the endowment house—of course I know nothing about it—whether any such obligation is taken.

Mr. LYMAN. Is that the question you asked me, Mr. Chairman?

The CHAIRMAN. No; that was not my question. It was a statement to counsel.

Mr. WORTHINGTON. I had understood, Mr. Chairman, that that was expressly disclaimed by counsel here the other day.

The CHAIRMAN. Counsel stated that they did not propose, as far as they were concerned, to offer any proof upon that question; but the Chairman did not understand that therefore the committee was precluded from showing it. Is there any objection to the question?

Mr. WORTHINGTON. I do object to it for the reasons already stated; and, further, because it does not follow at all that because the witness went through certain ceremonies or took certain obligations, if you please, Senator Smoot took them.

The CHAIRMAN. That would not follow of itself. If nothing further than this can be shown, of course it will have no bearing upon Mr. Smoot at all. Read the question, Mr. Reporter.

The reporter read as follows:

The CHAIRMAN. Will you please state what the ceremony is in going through the endowment house?

Mr. LYMAN. I could not do so.

Mr. WORTHINGTON. I do insist upon my objection. I understood the chair to ask me whether I had any further objection.

The CHAIRMAN. The chair thinks it is permissible; and, as the chair stated, if nothing appears beyond this to connect Mr. Smoot with it, of course it will have no bearing upon the case. Can you state what that ceremony was?

Mr. LYMAN. I could not, Mr. Chairman; I could not do so if it was to save my life.

The CHAIRMAN. You could not?

Mr. LYMAN. No, sir.

The CHAIRMAN Can you state any portion of it?

Mr. LYMAN. I might approximate something of it that I remember.

The CHAIRMAN. As nearly as you can.

Mr. LYMAN. I remember that I agreed to be an upright and moral man, pure in my life. I agreed to refrain from sexual commerce with any woman except my wife or wives, as were given to me in the priesthood. The law of purity I subscribed to willingly, of my own choice, and to be true and good to all men. I took no oath nor obligation against any person or any country or government or kingdom or anything of that kind. I remember that distinctly.

The CHAIRMAN. Of course the charge is made, and I want to know the facts. You would know about it, having gone through the endowment house?

Mr. LYMAN. Yes.

The CHAIRMAN. There was nothing of that kind?

Mr. LYMAN. Nothing of that kind.

The CHAIRMAN. No obligation or oath?

Mr. LYMAN. Not at all; no, sir. (1; 436,437).

After this had occurred, Joseph F. Smith was recalled, and on this subject was further examined by counsel for the respondent, as follows:

Mr. TAYLER. I wish to ask two questions. Mr. Smith, something has been said about an endowment oath. I do not want to go into that subject or to inquire of you what it is, but whatever oath or obligation has been taken by those who have been admitted to the church, at whatever stage it is taken, is the same now that it has been for years?

Mr. SMITH. It is the same that it has always been.

Mr. TAYLER. It is the same that it has always been?

Mr. SMITH. Yes, so far as I know.
Mr. TAYLER. No other oath is taken now than heretofore?
Mr. SMITH. I should like to say that there is no oath taken; that we abjure oaths. We do not take oaths unless we are forced to take them.
Mr. TAYLER. I understand. You understand what I mean—any obligation——
Mr. SMITH. Covenant or agreement—we do that.
Mr. TAYLER. Any obligation of loyalty to the church such as would be proper to be taken?
Mr. SMITH. Certainly.
Mr. TAYLER. That is the same now that it has always been?
Mr. SMITH. Yes, sir; that it has always been, so far as I know. I can only say that they are the same as they were revealed to me.
Mr. TAYLER. Exactiy.
Mr. SMITH. And as they were taught to me.
Mr. TAYLER. You have known them for forty years or more?
Mr. SMITH. I have been more or less acquainted with them for a great many years. (1; 484.)

It will be seen that neither the witness Lyman nor the witness Joseph F. Smith declined to answer any question that was put to him with regard to this alleged covenant or obligation.

The next witness on the subject (who, like the two preceding witnesses, was summoned and examined on behalf of the protestants), was Brigham H. Roberts. After counsel for the protestants had examined this witness and announced that they had no further questions to ask him, the following occurred:

The CHAIRMAN. Mr. Roberts, there is another subject upon which I want to ask you a question. It has been stated here that the endowment house was taken down in 1890.
Mr. ROBERTS. I think earlier than that.
The CHAIRMAN. Well, at some time it was taken down?
Mr. ROBERTS. Yes.
The CHAIRMAN. Did you ever go through the endowment house?
Mr. ROBERTS. Yes, sir.
The CHAIRMAN. When?
Mr. ROBERTS. I think it was in 1877.
The CHAIRMAN. Have you been present at times when others have passed through the endowment house?
Mr. ROBERTS. Yes, sir.
The CHAIRMAN. Frequently?
Mr. ROBERTS. No, sir.
The CHAIRMAN. Is the ceremony that used to be performed in what was called the endowment house performed now?
Mr. ROBERTS. I think so.
The CHAIRMAN. Where?
Mr. ROBERTS. When?
The CHAIRMAN. Where, I say?
Mr. ROBERTS. In the temples, as I understand it.
The CHAIRMAN. How many temples are there in Utah?
Mr. ROBERTS. I believe there are four.
The CHAIRMAN. And the ceremony that used to be performed in the endowment house is now performed in the temple?
Mr. ROBERTS. Yes, sir.
Mr. WORTHINGTON. He says he thinks it is. He does not know.
The CHAIRMAN. Do you remember the ceremony?
Mr. ROBERTS. No, sir; I do not remember the ceremonies distinctly.
The CHAIRMAN. Do you remember any portion of it?
Mr. ROBERTS. Only in a general way, Senator.
The CHAIRMAN. Do you know, Mr. Roberts, of any change in the ceremony performed in the Endowment House and as it is performed to-day in the temple?
Mr. ROBERTS. No, sir.
The CHAIRMAN. The ceremony is the same. Now, will you state to the committee what that ceremony was, or is, as nearly as you can?
Mr. ROBERTS. Well, the ceremonies consist of what would be considered a series of ceremonies, I take it, of which I only have a general impression.

The CHAIRMAN. You have something more than a general impression in your own case?

Mr. ROBERTS. No; I think not.

The CHAIRMAN. How many days did it take you to go through the Endowment House?

Mr. ROBERTS. Well, part of one day.

The CHAIRMAN. Who were present at the time? Do you remember?

Mr. ROBERTS. I do not remember.

The CHAIRMAN. Can you tell the committee any portion of that ceremony?

Mr. ROBERTS. No, sir.

The CHAIRMAN. Why not?

Mr. ROBERTS. Well, for one reason, I do not feel at liberty to do so.

The CHAIRMAN. Why not?

Mr. ROBERTS. Because I consider myself in trust in relation to those matters, and I do not feel at liberty to make any disclosures in relation to them.

The CHAIRMAN. It was then a secret?

Mr. ROBERTS. Yes.

The CHAIRMAN. Does this religious denomination have, as one of its ceremonies, secret obligations or covenants?

Mr. ROBERTS. I think they could not be properly called secrets. Of course they are common to all worthy members of the church, and generally known by them.

The CHAIRMAN. Well, secret from the world?

Mr. ROBERTS. Secret from the world.

The CHAIRMAN. The obligations and covenants, whatever they are, then you are not at liberty to disclose?

Mr. ROBERTS. No, sir; I would be led to regard those obligations as similar to those who perhaps have passed through masonic fraternities, or are members of masonic fraternities.

The CHAIRMAN. Then your church organization in that particular is a sort of Masonic fraternity?

Mr. ROBERTS. It is analogous, perhaps, in some of its features.

The CHAIRMAN. You say you can remember, of course, what occurred, but you do not feel at liberty to disclose it, and for that reason you will not disclose it?

Mr. ROBERTS. Not specifically. I do not wish, however, Senator, to be understood as being in any sense defiant in that matter.

The CHAIRMAN. That is not so understood, Mr. Roberts, at all.

Mr. ROBERTS. I do not wish to put myself in opposition or raise any issue here at all.

The CHAIRMAN. The reason you have assigned is accepted. The obligation, whatever it is, taken in the Endowment House, is such that you do not feel at liberty to disclose it?

Mr. ROBERTS. That is right.

The CHAIRMAN. Should you do so, what would you expect as the result?

Mr. ROBERTS. I would expect to lose caste with my people as betraying a trust.

Senator OVERMAN. Do all members of the church have to go through that?

Mr. ROBERTS. Not all members.

Senator OVERMAN. What proportion of them, and how is it regulated?

Mr. ROBERTS. It is governed chiefly by worthiness—moral worthiness.

Senator BAILEY. And is it somewhat a matter of degrees, as it is in Masonry? I believe they have several degrees.

The CHAIRMAN. Do you recall whether any penalty was imposed upon a person who should disclose the covenants?

Mr. ROBERTS. No, sir.

The CHAIRMAN. You do not remember?

Mr. ROBERTS. Beyond the disfavor and distrust of his fellows.

The CHAIRMAN. Have you ever been present at a marriage ceremony in the temple?

Mr. ROBERT. Yes, sir.

The CHAIRMAN. Could you tell what that is?

Mr. ROBERTS. I could not, only in a general way. The ceremony is of some length. I remember performing the ceremony in the case of my own daughter when she was married, and, not being familiar with the ceremony, a copy of it was placed in my hands and I read the ceremony, but I could only remember the general terms of it.

The CHAIRMAN. If the members who have gone through the Endowment House, then, keep faith with the church they will not disclose what occurred?

Mr. ROBERTS. No, sir.

Senator BAILEY. Do you feel at liberty, Mr. Roberts, to say whether or not there is anything in that ceremony that permits a man—I will adopt a different expres-

sion—that abridges a man's freedom of political action or action in any respect, except in a religious way?

Mr. ROBERTS. No, sir.

Senator BAILEY. I do not quite understand whether you mean by your answer to say that you do not feel free to answer that or that there is nothing.

Mr. ROBERTS. I mean to say that there is nothing. (1; 740, 742.) * * *

The CHAIRMAN. I want to ask Mr. Roberts one further question. What is there in these obligations—I will not use the term "oaths"—that makes it necessary to keep them from the world?

Mr. ROBERTS. I do not know of anything especially, except it be their general sacredness.

The CHAIRMAN. Their general sacredness? Ought sacred things to be kept from the world?

Mr. ROBERTS. I think some sacred things ought to be.

The CHAIRMAN. Could you name one sacred thing in connection with this ceremony that should be kept from the world?

Mr. ROBERTS. No, sir.

The CHAIRMAN. Why? Because you can not remember?

Mr. ROBERTS. Well, I could not say that. I would not say that, Senator.

The CHAIRMAN. You do remember it, then—the sacred thing that you mean?

Mr. ROBERTS. Some sacred things I do.

The CHAIRMAN. But you can not state to the committee what they are?

Mr. ROBERTS. I ask to be excused from stating them.

The CHAIRMAN. But I can not understand exactly how the church organization has things that the world must not know of. I did not know but you could give some reason why.

Mr. ROBERTS. I do not think I could throw any light upon that subject.

The CHAIRMAN. All right; I will not press it. (1–743.)

* * * * * * *

Mr. WORTHINGTON. I would like to ask, Mr. Roberts, whether this obligation or ceremony to which you refer in the Endowment House relates entirely to things spiritual or whether it relates to things temporal also?

The CHAIRMAN. Would it not be better, Mr. Worthington, to let him state what the obligation is?

Mr. WORTHINGTON. Yes, so far as I am concerned, I would very much prefer it, but I understand the suggestion by Senator Pettus was that he was interpreting that which he would state.

Of course I do not know anything more about this than the members of the committee do, but I think it might very well be that a witness might be allowed to state, and might properly say, that he would answer here as to anything that related to any temporal affairs; but as to things which related to matters between him and his God, or which he conceived to be between him and his God, he would not answer here or anywhere else, and that would not be an interpretation, but would simply be taking the protection which I understand the law gives to every man—that as to things which do relate entirely to religious matters they are matters which he has a right to keep within his own breast.

The CHAIRMAN. Your question was whether these obligations related to spiritual affairs or temporal affairs.

Mr. WORTHINGTON. Yes; that was my question.

The CHAIRMAN. The trouble is he interprets a thing which is unknown and unseeable to us, and which he considers spiritual.

Mr. CARLISLE. What he considers spiritual we might consider temporal, if the matter itself was disclosed.

The CHAIRMAN. It seems to me that the witness having refused to state what the ceremony is, or what the obligations demand, ought not to be questioned and permitted to state what he thinks it did not convey, or what obligation it imposed, or what it did not impose. The committee can judge of that.

Mr. WORTHINGTON. Of course, we are here not representing the witness, but representing only Senator Smoot.

The CHAIRMAN. Yes.

Mr. WORTHINGTON. And it is the witness pleading a privilege and making the refusal, and not Senator Smoot or his counsel. We would like to have this question answered.

The CHAIRMAN. What is the question?

Mr. WORTHINGTON. The question is whether this obligation refers to things spiritual or things temporal.

Senator BAILEY. I do not think it makes any difference to the committee in the

end, or will affect its conclusions, whether that is answered or not. I am partly responsible for that line of questions, and I asked the first question myself because I really intended to insist, if it related in any way to the duties of a citizen, that the committee was entitled to know what that was, and if it did not, then I had no further interest in it.

The CHAIRMAN. Let the witness answer that question.

Mr. ROBERTS. May I have the question read?

The CHAIRMAN. Certainly.

The reporter read as follows:

Mr. WORTHINGTON. I would like to ask, Mr. Roberts, whether this obligation or ceremony to which you refer in the endowment house relates entirely to things spiritual or whether it relates to things temporal also?

Mr. ROBERTS. I regard them as relating to things spiritual, absolutely.

Mr. TAYLER. If we were in a court of justice, and insisted upon it, I think that opens the door so wide that the whole oath would come in.

The CHAIRMAN. I think so, too.

Mr. TAYLER. But I do not care to do it. (1; 745, 746.)

The next witness called on behalf of the protestants was A. M. Cannon. After his examination by counsel for the protestants was concluded he was further examined by the chairman of the committee on this subject, and his testimony was as follows:

The CHAIRMAN. Do you remember the covenant you took when you went through the endowment house?

Mr. CANNON. Oh, yes.

The CHAIRMAN. Could you state the ceremony?

Mr. CANNON. I would not like to.

The CHAIRMAN. Why not?

Mr. CANNON. Because it is of a religious character, and it is simply an obligation that I enter into to be pure before my Maker and worthy of the attainment of my Redeemer and the fellowship and love of my children and their mothers, my departed ancestry, and my coming descendants.

The CHAIRMAN. What objection is there to making that public?

Mr. CANNON. Because it is sacred.

The CHAIRMAN. How sacred?

Mr. CANNON. It is simply a covenant that I enter into with my Maker in private.

The CHAIRMAN. All the tenets of your religion are sacred, are they not?

Mr. CANNON. Sir?

The CHAIRMAN. They are all sacred, are they not—the teachings?

Mr. CANNON. All of those are sacred; yes, all of those things.

The CHAIRMAN. I do not quite understand why you should keep them secret.

Mr. CANNON. It is because it is necessary to keep them secret. If you will permit me, Mr. Chairman, we admit only the purest of our people to enter there.

The CHAIRMAN. People like you and the president of the church? I suppose the president of the church is admitted?

Mr. CANNON. The presidency of the church, if he continues in good standing, and our people whoever are in good standing and deemed worthy of the proper recommends are permitted to enter there.

The CHAIRMAN. Do you enter into any obligation not to reveal these ceremonies?

Mr. CANNON. I feel it would be very improper to reveal them.

The CHAIRMAN. I say, do you enter into any obligation not to?

Mr. CANNON. There are sacred obligations connected with all the higher ordinances of the church.

The CHAIRMAN. In words, do you promise not to reveal?

Mr. CANNON. I feel that that is the trust reposed in me, that I will not go and——

The CHAIRMAN. I think you do not understand my question. Do you promise specifically not to reveal what occurs in the endowment house?

Mr. CANNON. I would rather not tell what occurs there. I say this——

The CHAIRMAN. I think, Mr. Cannon, you do not understand me. Do you promise not to reveal what occurs in the endowment house when you go through?

Mr. CANNON. I feel that that is an obligation I take upon me when I do that.

The CHAIRMAN. When you go through the endowment house do you take that obligation upon you in express terms?

Mr. CANNON. I think I do.

The CHAIRMAN. You know, do you not, whether you do or not? Why do you take that obligation not to reveal these things?

Mr. CANNON. Because we are—I do not want to be disrespectful to this committee.

The CHAIRMAN. I know you would not be.

Mr. CANNON. The Lord gave us to understand that we should not make common the sacred things that He committed to His disciples. He told them they must not do that lest they trample them under their feet and rend them.

The CHAIRMAN. Do you remember whether there was any penalty attached if they should reveal?

Mr. CANNON. I do not remember that there is any penalty.

The CHAIRMAN. None whatever?

Mr. CANNON. I do not remember.

The CHAIRMAN. Has there been any change in the ceremony of the endowment house since you went through in 1859, up to the present time, that you are aware of?

Mr. CANNON. No.

The CHAIRMAN. No change in the ceremony or obligations?

Mr. CANNON. No. (1; 791, 792.)

The next witness called by the protestants was Moses Thatcher. After counsel for the protestants had finished their examination of Mr. Thatcher, the following occurred:

The CHAIRMAN. One other question: The endowment house, I believe, has been taken down?

Mr. THATCHER. That is as I understand it. It has been taken down.

The CHAIRMAN. Has the ceremony of the endowment house been wiped out also, or is that performed now?

Mr. THATCHER. I am just trying to think whether I have been through the temple, in the light in which I went through the endowment house, to give you a correct answer on that, but my impressions are that the ceremony has not been changed.

The CHAIRMAN. You have seen the ceremony in the temple? You have witnessed it?

Mr. THATCHER. I think I have heard it.

The CHAIRMAN. And you think there is no change in it?

Mr. THATCHER. No, sir.

The CHAIRMAN. When did you go through the endowment house?

Mr. THATCHER. My impressions are when I married the wife of my youth—in 1861.

The CHAIRMAN. Will you state to the committee the ceremony in the endowment house? I do not mean the ceremony of marriage; but did you go through the endowment house when you became an apostle?

Mr. THATCHER. No, sir; it was not necessary.

The CHAIRMAN. You have been through the endowment house, then, but once?

Mr. THATCHER. Yes, sir.

The CHAIRMAN. Will you state to the committee the ceremony of the endowment house?

Mr. THATCHER. I think, Mr. Chairman, that I might be excused on that.

The CHAIRMAN. Why?

Mr. THATCHER. For the reason that those were held to be sacred matters and only pertaining to religious vows.

The CHAIRMAN. Are you obligated not to reveal them?

Mr. THATCHER. Yes; I think I am.

The CHAIRMAN. What would be the effect if you should disclose them? That is, is there any penalty attached?

Mr. THATCHER. There would be no effect except upon my own conscience.

The CHAIRMAN. That is all?

Mr. THATCHER. That is all.

The CHAIRMAN. But you are under obligation as a part of the ceremony not to reveal it?

Mr. THATCHER. Yes, sir; I feel myself under such obligation. (1; 1048, 1049.)

This was all the testimony on the subject of the alleged oath or obligation taken during the sessions of the committee held in the spring of 1904. The last session when testimony was taken during that spring occurred on the 2d of May, 1904. When the taking of testimony was resumed in December, 1904, counsel for the protestants produced and examined certain witnesses on this subject, the substance of whose testimony will now be stated.

J. H. Wallis, sr., who had been a Mormon but who had formally notified the bishop of his ward, seven or eight months before he was examined, that he no longer considered himself a member of the church, testified that on several occasions he had taken his endowments in the temple at Salt Lake City. When first examined he said that he did not know whether he had it exactly right; but that the substance of the so-called "oath of vengeance" is that those who took it promised and vowed that they "will never cease to importune high Heaven to avenge the blood of the prophets on the nations of the earth or the inhabitants of the earth." He added that if his memory served him, he thought that was about right, and that a passage of scripture is quoted from the Revelations, sixth chapter, ninth verse. (2; 79.)

The next day Mr. Wallis was recalled and testified that in repeating the obligation he had made a mistake; and that he should have said "upon this nation" instead of "upon the inhabitants of the earth." (2; 148.)

Two witnesses were called on behalf of the respondent to impeach Wallis. One of them Moroni Gillespie, who had been a member of the police force in Salt Lake City for eleven or twelve years, testified that he knew Wallis's general reputation for truth and veracity in the community in which he lived; that it was bad; and that he would not believe him under oath. Wallis had testified that he had never been arrested.

This witness testified that he was present in the police court on one occasion when Wallis was under arrest and plead guilty to the charge of drunkenness. Gillespie further testified that he had known Wallis for several years and that, in his opinion, he was not altogether of sound mind. (3; 317, 318.)

The other witness as to the veracity of Wallis was William Langton (2, 1022; 3, 143, 144). Neither his testimony nor that of Gillespie was contradicted or impaired in any way. His conclusion, from what he had seen of Wallis, was that the man was crazy. He further testified that, in his opinion, Wallis's general reputation for truth and veracity was such that he would not believe him on oath.

When Langton was asked by counsel for the respondent to give his reasons for thinking that Wallis was of unsound mind, objection was made by the counsel for the protestants and the objection was sustained (3; 144). But subsequently he was recalled and allowed to give his reasons, which he did at length (3; 445).

August W. Lundstrum, another witness for the protestants, testified that he had taken the endowment six times, and that the obligation in question was:

> We and each of us solemnly promise and covenant that we shall ask God to avenge the blood of Joseph Smith upon this nation. (2; 151–153.)

He subsequently slightly varies this statement by saying that the prayer was: "We ask God, the Eternal Father, to avenge the blood of Joseph Smith upon this nation." (2; 161.)

Three witnesses were called on behalf of the respondent to impeach Lundstrom. One of them, F. S. Fernstrom, testified that he had known Lundstrom for about fourteen years, and Lundstrom's general reputation for truth in the community in which he lived was bad, and that he, witness, would not believe him under oath. On cross-examination by counsel for the protestants the fact was brought out that Lundstrom

had borrowed from his bishop part of a fund which the bishop had collected for the support of the poor, and that when asked by the bishop to return the money, Lundstrom refused to do it, saying that the church owed him a living. (2; 1012.)

One of these witnesses, C. V. Anderson, testified that he knew Lundstrom's general reputation for veracity in Salt Lake City, where he lived; that it was bad, and that the witness did not think he would believe Lundstrom on oath. (2; 1013.)

J. H. Hayward was the third witness on this subject. He testified that he had known Lundstrom for many years, the latter having been at one time in his employ; that he knew Lundstrom's general reputation for truth and veracity in Salt Lake City, where he lived; that it was bad, and that from his reputation the witness would not believe him under oath.

This evidence as to Lundstrom's reputation for truth and veracity was not rebutted in any way.

The third and last witness called by the protestants, during the sessions of the committee held in December, 1904, on this subject of the alleged obligation was Mrs. Annie Elliott, who testified that she had taken the endowments several times, and that during the ceremony "they told me to pray and never cease to pray to get revenge for the blood of the prophets on this nation, and also teach it to my children and children's children." (2; 189.)

On cross-examination this witness stated positively that she had never told anybody about this obligation; and that if Mr. Tayler was examining her from a memorandum informing him what her testimony would be, she did not know where it came from or how Mr. Tayler came to get it (2; 194). On her direct examination Mrs. Elliott stated that she was married in Denmark, and that her husband followed her to this country. Her examination by counsel for the protestants then proceeded as follows:

Mr. TAYLER. Is he living now—that is, the husband whom you married in Denmark?
Mrs. ELLIOTT. No, sir.
Mr. TAYLER. You lived with him until he died, did you?
Mrs. TAYLER. Yes, sir.
Mr. TAYLER. Where did he die?
Mrs. ELLIOTT. Why, in Elsinore.
Mr. TAYLER. In Utah?
Mrs. ELLIOTT. Yes, sir.
Mr. TAYLER. When?
Mrs. ELLIOTT. In 1897.
Mr. TAYLER. Did you, after his death, marry?
Mrs. ELLIOTT. Yes, sir; I married in 1899. (2; 184.)

On her cross-examination, after she had testified that she had left the church in 1897, the following occurred:

Mr. WORTHINGTON. Was it before or after the death of your first husband?
Mrs. ELLIOTT. Why, it was after.
Mr. WORTHINGTON. What time in 1897 did he die?
Mrs. ELLIOTT. He died in October. (2; 191.)

The value of the testimony of this witness may be judged by the fact that the husband who followed her to this country not only did not die in October, 1897, but was living at the time Mrs. Elliott gave the testimony in question; and was subsequently called as a witness on behalf of the respondent (2; 1015). He testified that she had

obtained a divorce from him about six years before he gave his testimony, which was in January, 1905. His testimony showed clearly that she knew he was living when she said he was dead.

On behalf of the respondent a number of witnesses were examined on this subject, and the substance of their testimony is as follows:

Hugh M. Dougall, who is a farmer and cattle grower, and is postmaster at the town of Springville, in Utah, was expelled from the Mormon Church about 1874, and since then has not been in any way connected with it. He took his endowments when he was about 25 years old.

He testified that according to his recollection the obligation was, in substance, that those who took it importuned heaven to avenge the blood of the prophets and the martyrs on this generation, and that he did not remember the name of Joseph Smith being mentioned at all. (2; 759.)

Mr. Dougall was subsequently recalled, and asked by Senator Knox this question:

"Are you willing to say whether the vow obligated you to anything incompatible with your giving full and supreme allegiance to the United States or the State of Utah, or which obligated you to anything incompatible with your fully performing your duty as a citizen of the United States and that State?"

He answered: "Not one thing." (2; 781.)

Alonzo A. Noon left the Mormon Church voluntarily about 1870, when he was 32 years of age, having taken his endowments when he was 28 or 30 years old. He stated that there was nothing in the ceremony about promising or vowing to importune heaven to avenge the blood of the prophets on this nation, and that there was nothing in the ceremony which in any way imported hostility to the United States or to the Government thereof. That he was perfectly clear about that.

He also said he did not remember that the name of Joseph Smith was used in the ceremony. He did recollect that there was in the ceremony a quotation from the Scriptures, and upon hearing read verses 9 and 10, chapter 6, of the Revelations, he said that it was something like that; that that was about the intent.

One of these verses, it will be remembered, was referred to by the witness Wallis.

The two verses are as follows:

> Nine. And when he had opened the fifth seal, I saw under the altar the souls of them that were slain for the word of God, and for the testimony which they held.
>
> Ten. And they cried with a loud voice saying: How long, Oh Lord, holy and true, dost Thou not judge and avenge our blood on them that dwell on the earth. (774.)

Being asked whether there was anything in the obligation which indicated hostility to the Government, Mr. Noon said:

"The very reverse. I have never heard any people taught only loyalty to the Government of the United States." (2; 775.)

Mr. Noon was recalled and asked the same question that had been propounded by Senator Knox to Mr. Dougall, and he answered the question in the same way. (2; 781.)

William Hatfield, who was a Mormon until he was 23 years of age, after which he drifted away from that church, when he was not quite 21 years of age took his endowments as a priliminary to his marriage. (2; 785.)

He said that neither he nor any others in his hearing took the obligation which Wallis had testified to, and that he did not at that time take any obligation or enter into any covenant, vow, or agreement of any kind inconsistent with his duties as a citizen of the Territory of Utah or of the United States. He was not cross-examined. (2; 796.)

John P. Meakin, who was a Mormon until he was 23 or 24 years of age, left the church because he did not believe in polygamy. (2; 796.)

He went through the Endowment House when he was 18 years old. He stated that he had no recollection at all of any obligation of vengeance or retribution, and that nothing took place at the time with reference to promising or vowing to importune heaven to avenge the blood of the prophets on this Nation, or to avenge the blood of Joseph Smith on anybody; that there was nothing took place which imported any obligation in opposition to his duty as a citizen either of the Territory of Utah or of the United States; that he was very clear about this. (799.)

He also said that there was nothing in the endowment ceremony about praying the Almighty to avenge the blood of the prophets on this generation. (2; 801.)

Elias A. Smith, cashier of the Deseret Savings Bank, in Salt Lake City, in answer to a question by the chairman, stated that he had conscientious scruples against divulging any part of the endowment ceremony (2; 854); but in answer to a question by Senator Foraker he said there was nothing in any obligation of the church which it imposed upon its members, in connection with marriage or any other occasion, inconsistent with fidelity as citizens of the National Government or to the State government. Mr. Smith persisted that while he had stated what was not in the obligation he did not feel at liberty to state what was in it. (2; 855).

Richard W. Young, who was a graduate of West Point and of the law school of Columbia College, New York City, and who had served in the Volunteer Army in the Spanish war, in the Philippines, and else where, is a member of the Mormon Church, and is not a polygamist. (2; 950–952.) He was asked by the chairman if he had any objection to disclosing what took place during the endowment ceremony, and he replied that he considered himself under an obligation not to do so. (2; 969.)

He was asked later by counsel for the respondent if he had any objection to stating whether the ceremony included, in any form or shape, any invocation of vengeance or retribution against this nation. Senator McComas suggested that the witness should state the whole ceremony or nothing. Thereupon an extended argument was made, at the end of which the witness was asked by counsel for the respondent:

> In that ceremony is there anything which relates to your duties or obligations to your Government or to this nation.

The chairman ruled that if the witness should answer this question he would be required to state the whole ceremony, and thereupon the witness declined to answer it. (2; 981–985.)

Reed Smoot testified positively that there is nothing in the endowment ceremony about avenging the blood of the prophets or avenging anything else on this nation or on this Government. (3; 183, 184.)

As already stated, the case was reopened during the present session of Congress for the purpose of allowing the introduction of further

testimony on behalf of the protestants, and four additional witnesses were produced with reference to the matter of the alleged obligation. No further testimony on the subject was taken on behalf of the respondent.

The four witnesses referred to were W. J. Thomas, J. P. Holmgrem, H. W. Lawrence, and W. M. Wolfe.

The witness Thomas testified that he passed the endowment house in 1869. His examination on this subject was as follows:

Mr. CARLISLE. I have asked you about whether any ceremonies took place before the oath or obligation took place? If so, state what it was.

Mr. THOMAS. There were washings and annointings there.

Mr. CARLISLE. Describe to the committee what you mean by anointing. Was your whole body anointed or your arm anointed; and, if so, was anything said when that was done?

Mr. THOMAS. My head was anointed and my right arm. I do not remember anything else.

Mr. CARLISLE. Was anything said by the person who conducted these ceremonies at the time he anointed your right arm? Were you told what it was for?

Mr. THOMAS. Yes, sir; he spoke very quick and I couldn't catch it all, but I remember when he anointed my arm to make it strong, and the substance of it was that I would avenge the blood of the prophets—prophet or prophets. I believe it was the plural. (4; 69.)

* * * * * * * *

Senator KNOX. You took this vow in what year?

Mr. THOMAS. In 1869.

Senator KNOX. How long did you remain in the church after that?

Mr. THOMAS. I remained in the church up until 1880.

Senator KNOX. That was eleven years; and you vowed to avenge the blood of the martyrs upon this nation, did you?

Mr. THOMAS. Yes, sir.

Senator KNOX. And your right arm was anointed to give you strength that you might do so. Is that correct?

Mr. THOMAS. That is the way I understood it.

Senator KNOX. What did you ever do in the line of keeping that vow? Did you ever avenge the blood of the martyrs upon this nation?

Mr. THOMAS. No, sir. I have enlisted twice to try and defend the nation.

Senator KNOX. Were you ever stirred up by the authorities of the church to get busy in that direction of avenging the blood of the martyrs upon this nation?

Mr. THOMAS. No.

Mr. WORTHINGTON. Do you know of any member of the church who did do anything in the way of using his right arm to avenge the blood of the prophets on this nation?

Mr. THOMAS. No, sir. (4; 71, 72.)

The witness Holmgren on this subject testified that he passed through the endowment house in 1889. His further examination on this subject is as follows:

Mr. CARLISLE. Do you remember the ceremonies that took place at that time?

Mr. HOLMGREN. Part of it.

Mr. CARLISLE. Are you willing to state the oath that was taken, or not? If you are not, I shall not press you.

Mr. HOLMGREN. What I understood and heard of it—sure.

Mr. CARLISLE. In the first place, what occurred?

Mr. HOLMGREN. In the endowment house?

Mr. CARLISLE. Yes.

Mr. HOLMGREN. There were a number of oaths and performances that were insignificant, I would say, until we came to the anointing room, and in that anointing room there was some language used that I am sorry I ever heard.

Mr. CARLISLE. Can you state what it was?

Mr. HOLMGREN. In anointing my arms, the gentleman used this language: "That your arms might be strong to avenge the blood of Joseph and Hyrum Smith." (4; 76, 77.)

The witness Lawrence, who was 70 years old at the time he testified, stated that he was a member of the Mormon church until 1869, and that he had taken or administered the alleged obligation in question a number of times. The following are the substantial parts of his testimony on this point:

Mr. CARLISLE. Mr. Lawrence, would you object to stating whether there is any oath, commonly called here the oath of vengeance, taken in the endowment house, and what it is?

Mr. LAWRENCE. Yes; there is.

Mr. CARLISLE. Can you state it in terms or in substance?

Mr. LAWRENCE. "You covenant and agree before God and angels and these witnesses that you will avenge the blood of the prophets, the prophet Joseph Smith, Hyrum Smith, Parley P. Pratt, David Patton"—their names are mentioned?

Mr. CARLISLE. Was that the case when you took the endowment?

Mr. LAWRENCE. Yes, sir. I do not know whether they were all mentioned when I was there or not, but they have been mentioned when I have been there.

Mr. CARLISLE. You have passed through the endowment a number of times?

Mr. LAWRENCE. Yes; I have been there a number of times.

Mr. CARLISLE. You mean these names have been mentioned some of the times when you passed through? That is what you mean?

Mr. LAWRENCE. Yes, sir.

Mr. CARLISLE. You do not know whether they were all mentioned at the same time or not?

Mr. LAWRENCE. No, sir.

Senator DILLINGHAM. Do I understand the witness has given the whole of the obligation?

Mr. CARLISLE. I will ask him. Do you remember now whether there was anything said about vengeance upon the people or vengeance upon the nation, or what was said of that sort, if you remember?

Mr. LAWRENCE. I say it has been stated. I can not state it only as I understand it. The word "nation" was not mentioned where I was in regard to that vengeance, but the feeling has always been against the nation and the State for allowing that deed to be perpetrated. The word "nation" was not mentioned. It is a little ambiguous in regard to that.

Mr. WORTHINGTON. You say you are ambiguous or it was ambiguous?

Mr. LAWRENCE. It was a little ambiguous there who it should be executed on. The supposition is it should be executed on the perpetrators of the deed.

Mr. CARLISLE. Mr. Lawrence, I will get you to state, if you can, whether this covenant, or oath, or whatever it may be called, is always administered by the same person and in the same terms, or whether it is administered at different times by different persons, and whether it is in writing or merely oral.

Mr. LAWRENCE. It is administered orally by different persons at different times.

Mr. CARLISLE. It may be, then, that there is a different form of the oath?

Mr. LAWRENCE. It may be administered a little different. Of course the substance is about the same, but there may be some men who administer it a little different from others. I have no doubt that it is, from what I have heard.

Mr. CARLISLE. You may take the witness.

Senator KNOX. Was this vengeance to be executed by the person taking the oath, or vow, or were you to implore the Almighty to avenge the blood of the prophets?

Mr. LAWRENCE. As I say, it was a little ambiguous in regard to that Of course you take an oath to avenge the blood of the prophets and teach the principle to your children and children's children.

Senator KNOX. I think you do not understand me. You stated a moment ago that there was some ambiguity in the oath as to whom the vengeance is directed against.

Mr. LAWRENCE. Yes.

Senator KNOX. Now, I am asking you who was to execute the vengeance. Was the person taking the vow or oath to execute it or were they to implore by prayer that God should take this vengeance?

Mr. LAWRENCE. Well, that was not inserted in it for the Lord to do it. They simply took upon themselves the oath to do it; but I say it is almost impossible for them to wreak vengeance, because those men that committed the deed have probably gone years ago.

Senator KNOX. My question was based on the exact language used by Professor Wolfe yesterday. He said that he heard the oath taken very recently, and that they vowed or promised that they would pray to Almighty God to avenge the blood of

the prophets. I think it is quite material, and I want to know what your recollection is about it.

Mr. LAWRENCE. That was not inserted in my day—that is, in regard to asking God to wreak this vengeance. (4; 108, 109.)

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Mr. WORTHINGTON. Tell us about how many times you were present when this oath was administered?

Mr. LAWRENCE. I could not say. It would go into the hundreds, probably.

Mr. WORTHINGTON. Several hundred times?

Mr. LAWRENCE. Yes; or dozens. I would say from one to three years, probably.

Mr. WORTHINGTON. And on each occasion to a great many people I suppose.

Mr. LAWRENCE. Yes, sir.

Mr. WORTHINGTON. On all the occasions when you heard it administered to others, or when it was administered to you, did you ever hear any reference to the nation of the United States as the object of vengeance?

Mr. LAWRENCE. During my administration the word "nation" was not used.

Mr. WORTHINGTON. Do you mean you administered the oath?

Mr. LAWRENCE. No, sir; yes, sir. I mean I officiated there with the rest of them.

Mr. WORTHINGTON. Then you both administered the covenant, and you heard others administer it?

Mr. LAWRENCE. Yes, sir.

Mr. WORTHINGTON. You administered it hundreds of times, and you heard it administered hundreds of times; is that right?

Mr. LAWRENCE. I was there off and on for one or two years.

Mr. WORTHINGTON. Did you administer it hundreds of times?

Mr. LAWRENCE. I will say yes. (4; 110, 111.)

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Mr. WORTHINGTON. Now, I come back. During all the time you administered the oath, or heard it administered by others, did you ever hear the "nation" or the "United States," or the "Government of the United States" referred to in any way as the object of vengeance that was the subject of that covenant?

Mr. LAWRENCE. I will say that, at that time, it was not connected with the obligation. I will say this, that the Government has always been blamed for allowing that deed to be perpetrated.

Mr. WORTHINGTON. Don't let us depart from the ceremony. I want to find out what took place at the ceremony when you administered the covenant. Did you administer it always in the same language?

Mr. LAWRENCE. I tried to, sir.

Mr. WORTHINGTON. Where did you learn it?

Mr. LAWRENCE. I learned it from the church ritual, I suppose. It was what was given to me.

Mr. WORTHINGTON. Was it something that was in writing or was it in print?

Mr. LAWRENCE. No, sir; not in writing.

Mr. WORTHINGTON. It was communicated to you orally and you committed it to memory, did you?

Mr. LAWRENCE. Yes, sir.

Mr. WORTHINGTON. You do not remember who gave it to you?

Mr. LAWRENCE. I do not remember just now.

Mr. WORTHINGTON. It was given to you as the traditional oath of the temple, was it not?

Mr. LAWRENCE. It was given to me to use.

Mr. WORTHINGTON. You have said to Mr. Carlisle that there is no doubt that the language of the covenant was varied from time to time. Did you ever hear it given in any other form than that you have told us about?

Mr. LAWRENCE. Yes. I will explain that. I have said that there were different parties that officiated at different times, and from what I had heard they had changed it a little. Inasmuch as it was orally given, one man would administer it a little different from others.

Mr. WORTHINGTON. You know that by hearsay?

Mr. LAWRENCE. I know that by hearsay only. (4; 111, 112.)

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Mr. WORTHINGTON. Referring to this ceremony, and the covenant of vengeance, as it is called, do you remember in that connection whether there was any passage in the Book of Revelations of the Bible?

Mr. LAWRENCE. Yes, sir.

Mr. WORTHINGTON. What is that?

Mr. LAWRENCE. That is used in connection with this as a justification for it.

Mr. WORTHINGTON. Can you give us the verse and chapter of Revelations?

Mr. LAWRENCE. I think it is a chapter from Revelations. It is probably chapter six. It is taken from Revelations. It is simply referred to. I will answer that that quotation is referred to.

Mr. WORTHINGTON. Was it not a part of the teaching of the church, when you were connected with it, that the Constitution of the United States is an inspired document?

Mr. LAWRENCE. Yes, sir. Do you want an answer to that?

Mr. WORTHINGTON. I have all the answer I care to have, sir. If there is anything you wish to add to take away from the effect of your testimony, you have that privilege, provided it is not a speech. Let me read the ninth and tenth verses of the sixth chapter of Revelations, and see if those——

Mr. LAWRENCE. "How long, Oh Lord?" It is just a quotation.

Mr. WORTHINGTON. I will read the two, and see if those two verses, or either of them, are the ones to which you refer:

"And when he had opened the fifth seal I saw under the altar the souls of them that were slain by the Word of God, and by the testimony which they held.

"And they cried with a loud voice, saying, How long, Oh Lord, Holy and true, dost thou not judge and avenge our blood on them that dwell on the earth?"

Mr. LAWRENCE. That is part of it in connection with this?

Mr. WORTHINGTON. We would like to have the whole of it. Just show us all that was referred to in your ceremony there.

Mr. LAWRENCE. "How long, Oh Lord, Holy and true."

Mr. WORTHINGTON. "Dost thou not judge and avenge our blood on them that dwell on the earth?"

Mr. LAWRENCE. I think that was the part connected with it—just that part.

Mr. WORTHINGTON. You say that was used as a justification of the covenant, in connection with it?

Mr. LAWRENCE. That was used as a justification of the obligation.

The CHAIRMAN. He did not say as a justification of the covenant.

Mr. LAWRENCE. I said that was used as a justification of the obligation. (4; 116, 117.)

It will be seen that all three of these witnesses flatly contradicted what seems to be the theory of the protestants, that the obligation in question involved a promise on the part of the party going through the ceremony hostile to the United States or an appeal to the Almighty to inflict punishment on the nation.

The other witness on the point now under consideration is W. M. Wolfe. He testified that he had passed through the endowment house no less than twelve times, the first time being in May, 1894, and the last time in October, 1902. His examination on this subject then proceeded as follows:

Mr. CARLISLE. Will you state to the committee whether there is, as part of the ceremonies in the temple, any oath administered?

Mr. WOLFE. There are several oaths administered.

Mr. CARLISLE. Can you state what they are?

Mr. WOLFE. There is an oath of chastity, or, I might say, a covenant or law—a law of sacrifice and a law of vengeance.

Mr. CARLISLE. When you say a law of vengeance, what do you mean? Do you mean that there is any promise or pledge to avenge a wrong, or do you mean simply that there is some law read to you, or some rule read to you?

Mr. WOLFE. There is no covenant or agreement on the part of any individual to avenge anything.

Mr. CARLISLE. Just state to the committee what it is.

Mr. WOLFE. The law of vengeance is this: "You and each of you do covenant and promise that you will pray, and never cease to pray, Almighty God to avenge the blood of the prophets upon this nation, and that you will teach the same to your children and your children's children unto the third and fourth generations." At the conclusion the speaker says: "All bow your heads and say 'Yes.'"

Mr. CARLISLE. Was that done?

Mr. WOLFE. It was done.

Senator OVERMAN. Was that done every time, or just one time?

Mr. WOLFE. It was done every time I went through. (4; 7.)

Mr. Wolfe, for several years, and up to January last, was one of the professors in the Brigham Young College, at Logan, a Mormon institution. When asked on cross-examination whether charges of drunkenness had not been preferred against him in the institution, he said that no such charges had been made, to his knowledge, but that such charges might have been preferred against him. Upon being asked what he meant by saying that such charges might have been preferred against him, he answered that he meant that he had made himself liable to such charges for a period of possibly twenty years. (4; 24.)

He admitted that certain officers of the institution had had conversations with him in regard to his habit of drinking (4—25). He admitted that he had been required to resign his position in January last; but claimed that this was done because about that time he had given notice that he would no longer pay tithing. He admitted that officers of the institution had made objection to his habits of drinking, but said that they had never suggested his removal, or the desirability of his resignation until he had refused to pay tithes. (4; 26).

As to Wolfe's testimony, the respondent offered considerable testimony in rebuttal. One of the witnesses on this subject was James H. Linford, the president of Brigham Young College. He testified fully as to Wolfe's habit of drinking for a considerable period prior to the time he was compelled to resign; and testified, in substance, that Wolfe's resignation was not demanded on account of his refusing to pay tithes, but because his habits of drinking had grown on him so that it was no longer possible to allow him to retain his position. (4; 261, 271.)

There was also filed on behalf of the respondent the affidavit of Joseph E. Cardon, the bishop of the ward at Logan, in which Wolfe lived. This affidavit was admitted as evidence by consent of counsel for the protestants, and by leave of the committee. In this affidavit the witness contradicts what Wolfe stated in his testimony with reference to a conversation with the witness on the subject of tithing.

Wolfe was also contradicted, in a very material part of his evidence, by four witnesses. He had preferred charges against one Benjamin Kluff, in connection with a certain expedition that had been made to Mexico, of which expedition Kluff was in charge, and Wolfe was a member. Wolfe testified that on that expedition he had seen Kluff living in marital relations with one Florence Reynolds, who is alleged to have been Kluff's plural wife, taken since the manifesto Wolfe testified that, at the hearing of these charges before a church council, he had stated that he had seen Kluff and Florence Reynolds living in that relation.

By consent of counsel for the protestants, and by leave of the committee, there were filed the affidavit of the stenographer who took down Wolfe's statement, and the joint affidavit of the three members of the committee before whom he made his statement, all of them saying that he had not in any way referred to the fact that he had seen Kluff and Florence Reynolds living together, and that he did not in any way refer to the relations between those two people. (4; 302, 408, 409.)

Taking all of the testimony on this subject together, the overwhelming weight of it is against the contention that the respondent ever took any obligation of hostility to the United States. Seven witnesses

have in an indefinite way testified that the obligation included some kind of a promise or prayer indicating hostility to the nation, while 13 witnesses, about one-half of whom were called on behalf of the protestants, have testified positively and unqualifiedly to the contrary. All of the witnesses who have testified that the word "nation" was used in the obligation have been impeached as to their credibility, and no evidence has been introduced tending to sustain the veracity of any one of them.

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